

1 presumption of innocence?

2 Thank you. Burden of proof issue again
3 as I said the burden of proof in a criminal case
4 is entirely on the People and remains on them
5 throughout the trial. A defendant's not required
6 to prove anything nor is a defendant required to
7 disprove anything. As I said the entire burden of
8 proof is on the People and remains on them
9 throughout the trial.

10 Is there anyone amongst you who cannot
11 follow and accept this rule in our criminal law?

12 If a defendant does not testify in a
13 criminal trial that's not a factor from which any
14 inference unfavorable to such defendant maybe
15 drawn.

16 Is there anyone amongst you who cannot
17 accept this fundamental rule in our criminal law?

18 Ms. Pizzaro?

19 PROSPECTIVE JUROR: I have a problem with
20 that.

21 PROSPECTIVE JUROR: So do I.

22 THE COURT: Who else? You?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: You have a problem with it.

25 Ms. Pizzaro, we are going to talk to you

1 at a sidebar shortly.

2 Ms. Batwin, maybe we'll do the same with
3 you.

4 Anybody else have a feeling?

5 This is Ms. Fernandez. We are going to
6 talk to you too.

7 Anyone else?

8 I defined a little while ago for the
9 first panel the standard of proof required for
10 conviction in every criminal case. That standard
11 as you now know if you didn't know before is
12 called proof of guilt beyond a reasonable doubt.

13 Did all of you hear that definition when
14 I gave it earlier? Anybody want to hear it again?
15 I am happy to read it again if you want.

16 I have no takers. Keep that definition
17 in mind.

18 Let me remind you that it's the duty of
19 each juror carefully to review, weigh and consider
20 all the evidence. If after doing this you find
21 that the People have not proved the defendant's
22 guilt beyond a reasonable doubt as I have defined
23 the term, then you must find the defendant not
24 guilty.

25 On the other hand, if you are satisfied

1 that the People have proved the defendant's guilt
2 beyond a reasonable doubt as I have defined the
3 term, then you must find the defendant guilty.

4 Will you promise us that if you are
5 selected as a juror in this case you will in your
6 final deliberations follow and apply the standard
7 of proof that I have defined for you, that is
8 proof beyond a reasonable doubt? Anybody who
9 cannot make us that promise?

10 I will remind you that a deliberating
11 jury is not permitted to consider the subject of
12 punishment. If there is to be any sentencing
13 following the verdict that's for the Court and the
14 Court alone to deal with.

15 Will you promise that if selected you
16 will render your verdict free from fear, favor or
17 sympathy, and without considering any possibility
18 of sentence or punishment? Anybody who cannot
19 make us that promise?

20 And, finally, police officers will
21 testify in this case. They take the same oath as
22 anyone else. The mere fact a witness is a police
23 officer does not make that witness any more or any
24 less credible.

25 Is there anyone amongst you who has any

1 feelings about the police or who has had any
2 experiences with the police which would lead you
3 in your judgment to give a police officer's
4 testimony greater or lesser weight than anyone
5 else's merely because of the officer's occupation?
6 Anybody have that feeling one way or the other?

7 Ms. Pasyukova, what's your feeling?

8 PROSPECTIVE JUROR: I feel that they are
9 right.

10 THE COURT: You feel --

11 PROSPECTIVE JUROR: The police officers
12 are right because they see what's going on and
13 they take care of criminals and you have to give
14 them --

15 THE COURT: So you give a police
16 officer's testimony greater weight than anyone
17 else's merely because of the occupation?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Even if you didn't know the
20 officer?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. I saw another hand.

23 PROSPECTIVE JUROR: Me.

24 PROSPECTIVE JUROR: Mine.

25 THE COURT: Ms. Batwin.

1 PROSPECTIVE JUROR: So would I.

2 THE COURT: We don't need a sidebar for
3 you now.

4 Ms. Cifelli.

5 PROSPECTIVE JUROR: Private.

6 THE COURT: Ms. Dellauniversita, how do
7 you feel?

8 PROSPECTIVE JUROR: I raised three boys
9 on Staten Island and I have had a few good and bad
10 experiences with them.

11 THE COURT: Maybe that's good. I don't
12 know.

13 PROSPECTIVE JUROR: I don't know. Not
14 with my son got five tickets in one week, your
15 Honor. I don't think so.

16 THE COURT: What are you telling me?

17 PROSPECTIVE JUROR: I have issues they
18 might say something because it benefits the case
19 or whatever. I don't know. I would have to be
20 honest about this.

21 I would like to say they tell the whole
22 truth but I have questions and again I have had
23 good experiences with them but.

24 THE COURT: Are you telling me that you
25 tend to discredit a police officer's testimony

1 because of their job?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: That would apply to any
4 police officer whether you know him or her or not.
5 I am assuming you don't know the officers.

6 PROSPECTIVE JUROR: No, I don't think I
7 know them unless I had dealings with them at the
8 122, I have no idea. But I don't know. Again as
9 I said I raised three boys on the side line and I
10 have one or two dealings and not all of them were
11 good.

12 THE COURT: Okay. Is that it? Anybody
13 else on this issue?

14 Okay. I am done. We're going to step to
15 the sidebar and talk to a few people. Then I'll
16 let the lawyers address you.

17 PROSPECTIVE JUROR: Excuse me, I need a
18 private talk?

19 THE COURT: Okay.

20 (The following took place at the
21 sidebar:)

22 THE COURT: Just for the record the DA
23 points out I neglected to ask this jury if anybody
24 was the victim of a crime and the DA is going to
25 ask the question.

1 The first one is Ms. Batwin. I don't
2 know if we need to bring her over.

3 MR. LAMB: I think we can consent on her.
4 She believes that cops tell the truth.

5 MR. KATCHEN: It's consented to.

6 MS. RAJESWARI: We'll consent.

7 THE COURT: We'll deal with it when we
8 get to the challenges. I just want to know if we
9 have to bring her over.

10 MR. LAMB: Cifelli also.

11 THE COURT: Did she say she wants to talk
12 to us?

13 MS. RAJESWARI: I know --

14 MR. LAMB: I know that she said that she
15 would give more credit to police officers.

16 MS. RAJESWARI: I don't know.

17 MR. KATCHEN: I just want to talk to her.

18 MS. RAJESWARI: He can talk to her.

19 THE COURT: I put down a check indicating
20 she wanted to.

21 Ms. Cifelli, can you step over here a
22 minute? You can come over the bridge here. Just
23 watch out for the stairs.

24 (Prospective juror approached the
25 sidebar.)

1 THE COURT: You had a position I think on
2 police officer's testimony. What is it?

3 PROSPECTIVE JUROR: I just really think
4 they abuse their powers. I have had experiences
5 where they don't do anything.

6 THE COURT: Is this a kind of feeling
7 that would affect your judgment of the testimony
8 of any police officer?

9 PROSPECTIVE JUROR: It could. It
10 depends.

11 THE COURT: I beg your pardon?

12 PROSPECTIVE JUROR: It depends. It
13 could.

14 THE COURT: Any questions?

15 MS. RAJESWARI: No.

16 MR. KATCHEN: No.

17 THE COURT: Ms. Varone, could you step
18 over too?

19 (Prospective juror approached the
20 sidebar.)

21 THE COURT: And I forget what we were
22 going to talk to you about. What was it?

23 PROSPECTIVE JUROR: I said that with a
24 crime when I was in my late 20's my pocketbook was
25 stolen and I found it and --

1 THE COURT: This was a few years ago?

2 PROSPECTIVE JUROR: I was in my late 20's
3 at the time.

4 THE COURT: Was anybody arrested?

5 PROSPECTIVE JUROR: They did catch the
6 guy and they kept everything for evidence.

7 THE COURT: You never went to court?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Anything about that
10 experience that would prevent you from being a
11 fair juror in this case?

12 PROSPECTIVE JUROR: I don't think so. I
13 am not sure.

14 THE COURT: Any questions?

15 MR. LAMB: You're not sure whether --

16 THE COURT: She said I think so.

17 PROSPECTIVE JUROR: I think so. I'm okay
18 with it.

19 THE COURT: If you have questions.

20 MS. RAJESWARI: You're okay with it that
21 you could be a fair juror?

22 PROSPECTIVE JUROR: I guess I could
23 because I did experience something so I kind of
24 would I guess.

25 THE COURT: Could you tell us for sure

1 that you would be fair or is it your position
2 you're not sure? We have to know how you feel.

3 (Pause.)

4 PROSPECTIVE JUROR: I don't know if I
5 could be sure on that.

6 THE COURT: Anything else?

7 MR. LAMB: Nothing.

8 THE COURT: I will let you resume your
9 seat. Careful of the stairs.

10 MR. LAMB: Ms. Fernandez wanted to talk
11 to us.

12 THE COURT: Ms. Fernandez, could you step
13 over please?

14 (Prospective juror approached the
15 sidebar.)

16 THE COURT: I have a couple of things we
17 wanted to talk to you about. One was whether you
18 could deliberate or not. You think that would
19 pose a problem deliberating with eleven other
20 people?

21 PROSPECTIVE JUROR: Yes. I had on the
22 charges of the case I had personal in my own
23 family why I won't be able to be on a case like
24 this.

25 THE COURT: You don't think you could be

1 fair?

2 PROSPECTIVE JUROR: Right.

3 THE COURT: Any questions?

4 MR. LAMB: No.

5 MR. KATCHEN: No.

6 THE COURT: Thanks, Ms. Fernandez. The
7 sergeant wants you to go out this way. One step.

8 Ms. Dellauniversita, could you step over
9 please? Maybe it would be better if you went that
10 way.

11 (Prospective juror approached the
12 sidebar.)

13 THE COURT: What were we going to be
14 talking about?

15 PROSPECTIVE JUROR: I was trying to
16 remember the question.

17 THE COURT: Did you have a feeling about
18 police witnesses? That's what it was. You were
19 indicating you had five boys.

20 PROSPECTIVE JUROR: Five boys.

21 THE COURT: And one of them had five
22 tickets and your feeling?

23 THE WITNESS: My whole feeling about --
24 I don't think that's why I'm supposed to be over.
25 I think it was for something else. I do have

1 issues when the Mayor Guiliani was in charge, the
2 kids were illegally stopped on a constant basis.
3 I have certain issues.

4 THE COURT: I remember why you're here.
5 The one have you or anyone close to you been a
6 defendant in a criminal proceeding?

7 PROSPECTIVE JUROR: How about if people
8 went to jail that are close in the family. I had a
9 few close members that have been in prison.

10 THE COURT: Did you go to any court
11 proceedings yourself?

12 PROSPECTIVE JUROR: To see them?

13 THE COURT: Yes.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Anything about those events
16 that would prevent you from being fair in this
17 case?

18 PROSPECTIVE JUROR: I don't know. I
19 really don't know if I can put somebody in jail.
20 I don't know if I can go that far. Not to say
21 whether they're guilty or not but if I could do
22 that. You know, it killed me to see my family.

23 THE COURT: Okay. Counsellors,
24 questions?

25 MR. KATCHEN: No.

1 MR. LAMB: No.

2 PROSPECTIVE JUROR: Thank you, your
3 Honor.

4 THE COURT: Ms. Carbajal.

5 (Prospective juror approached the
6 sidebar.)

7 THE COURT: You snuck up on me. You're
8 pretty fast. What were we going to talk about?
9 Jury experience.

10 PROSPECTIVE JUROR: I believe after few
11 days I think pressure from other jurors is exerted
12 when time is going by the decision is not reached
13 and the other jurors can exert a lot of pressure.
14 I think that would be something difficult to deal
15 with.

16 THE COURT: Could you deal with it if you
17 had to?

18 PROSPECTIVE JUROR: Like I said I think
19 it's very hard. So I guess I will have to deal
20 with it but I feel that it isn't right people
21 should be -- you know, if you there let the people
22 make their own mind. You know just keep pushing,
23 it has to be done, we have to get it done. That
24 was my experience. And I know people who were
25 influenced but there is that possibility and I

1 don't know in my case, it's very hard to say. I
2 wasn't at the time but I think it can happen.

3 THE COURT: Any questions?

4 MS. RAJESWARI: You're not sure?

5 PROSPECTIVE JUROR: I am not sure.

6 MS. RAJESWARI: No further questions.

7 THE COURT: Thank you. I will let you
8 resume your seat.

9 Mr. Tam, you wanted to speak to us?

10 (Prospective juror approached the
11 sidebar.)

12 THE COURT: What did you want to talk
13 about?

14 PROSPECTIVE JUROR: I work for the Post
15 Office and we have some case with my co-worker
16 because the case they get fired. I am very
17 confused about the laws.

18 THE COURT: Have you had a hard time
19 understanding what I have been talking about in
20 terms of the law?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Any questions?

23 MR. LAMB: No.

24 MS. RAJESWARI: No.

25 PROSPECTIVE JUROR: College of the most

1 time I read the news, some story most of time so I
2 just worry about I can't make a fair judgment in
3 this case.

4 THE COURT: Thank you, sir. I'll let you
5 resume your seat.

6 Ms. Pizarro, could you step over please?

7 (Prospective juror approached the
8 sidebar.)

9 PROSPECTIVE JUROR: First of all, I have
10 a personal medical emergency. I burned myself
11 Labor Day and my bandages are starting to seep
12 through. My arms are raw and they started to seep
13 through and I am starting to feel a lot of pain.

14 THE COURT: You want to deal with this
15 right now?

16 MR. LAMB: Yes.

17 MR. KATCHEN: Yes.

18 THE COURT: We're going to excuse you,
19 Ms. Pizarro. Get to the ER, right?

20 PROSPECTIVE JUROR: No, I go right here
21 to Clove Urgicare.

22 THE COURT: Okay. We're excusing
23 Ms. Pizarro.

24 PROSPECTIVE JUROR: Do I have to go back
25 across the street?

1 THE CLERK: She has to sign out.

2 THE COURT: Just go over there and check
3 out.

4 PROSPECTIVE JUROR: Thank you so much.

5 THE COURT: Good luck.

6 All right.

7 One at a time. We don't need to speak to
8 number one, Ms. Batwin. She is gone already. Is
9 that your consensus?

10 MR. LAMB: Yes.

11 MR. KATCHEN: Yes.

12 (The following took place in open court:)

13 THE COURT: The lawyers are going to talk
14 to you now. If you want to talk privately about
15 anything just tell me.

16 MR. KATCHEN: Good morning, ladies and
17 gentlemen, and thank you for your patience this
18 morning.

19 I'm going to just go right into some
20 questions for you. I know that you were sitting
21 in the audience and probably listening before when
22 people were asked questions and answered them.

23 Ms. Thomas.

24 PROSPECTIVE JUROR: Yes.

25 MR. KATCHEN: Earlier a question was

1 posed as to whether or not rape can take place
2 within a relationship. What do you think about
3 that?

4 PROSPECTIVE JUROR: Yes.

5 MR. KATCHEN: Why do you think that is?

6 MR. LAMB: Objection.

7 THE COURT: Sustained as to why.

8 MR. KATCHEN: So if a woman says no, it's
9 no, no matter the circumstances.

10 PROSPECTIVE JUROR: Yes. They have --

11 MR. LAMB: Couldn't hear the answer.

12 MR. KATCHEN: If you could project your
13 voice a little bit.

14 PROSPECTIVE JUROR: So what is the
15 question?

16 MR. KATCHEN: The question is if a woman
17 says no, it means no.

18 PROSPECTIVE JUROR: Then it has to be
19 respected.

20 MR. KATCHEN: Mr. Gill, what are your
21 thoughts on that?

22 PROSPECTIVE JUROR: It has to be
23 consensual, simple as that.

24 MR. KATCHEN: Ms. Martinez.

25 PROSPECTIVE JUROR: The parties have to

1 agree.

2 MR. KATCHEN: Now is it, Mr. Te? I
3 didn't hear the pronunciation earlier.

4 PROSPECTIVE JUROR: I don't understand
5 English.

6 MR. KATCHEN: Do you speak English well?

7 PROSPECTIVE JUROR: Not really.

8 MR. KATCHEN: Have you been able to
9 understand what the judge has been saying and what
10 the lawyers have been saying?

11 PROSPECTIVE JUROR: No.

12 MR. KATCHEN: You haven't. Okay.

13 And you, sir, same situation you haven't
14 been able to understand?

15 PROSPECTIVE JUROR: No.

16 MR. KATCHEN: Ms. Matos, I was having a
17 bit of trouble hearing you earlier. Did you say
18 that your husband is a retired police officer or
19 ex husband?

20 PROSPECTIVE JUROR: Correction officer.

21 MR. KATCHEN: Corrections.

22 PROSPECTIVE JUROR: Yes.

23 MR. KATCHEN: And does that affect how
24 you are going to -- if you were chosen as a juror
25 that would affect how you would view the evidence

1 presented to you in this case?

2 PROSPECTIVE JUROR: I'm sorry, I don't
3 understand.

4 THE COURT: Move your chair up if you
5 want to.

6 MR. KATCHEN: I'm sorry.

7 THE COURT: Let's move this along. Ask a
8 question. Have the jurors speak up. Enough
9 already. Enough. Question.

10 MR. KATCHEN: Would you just answer that
11 question again? Just raise your voice a little
12 bit.

13 PROSPECTIVE JUROR: I understand a
14 little.

15 MR. KATCHEN: Again, you don't speak
16 English well.

17 PROSPECTIVE JUROR: Very little.

18 MR. KATCHEN: Have you been able to
19 understand what's been happening so far?

20 PROSPECTIVE JUROR: Very little.

21 MR. KATCHEN: I think she spoke Spanish to
22 another juror to communicate that.

23 Mr. Beckett, I am going to turn to
24 another question that hasn't been posed yet.
25 Would you expect -- and this is a rape case

1 forgive me if I am getting a bit more vulgar here.
2 Would you expect to see injury to a vagina of a
3 woman in a rape case? Would you expect to see
4 injury to the vagina of a woman in a rape case?

5 PROSPECTIVE JUROR: Yes. It's a question
6 if she's an older woman, younger woman, you know.

7 MR. KATCHEN: Okay. So there are factors
8 and you'll keep an open mind and assess the
9 evidence as it comes in, right?

10 PROSPECTIVE JUROR: Yes.

11 MR. KATCHEN: Okay.

12 I am not going to take up too much of
13 your time. One of the things the judge talked
14 about that is extremely important is your role as
15 the jury is to find facts, what does the evidence
16 support? And you're going to be asked to take an
17 oath just like any witness who testifies, same
18 oath. You are going to swear that that's what
19 you're going to do.

20 What that means is you are going to put
21 aside sympathy, you are going to put aside
22 thoughts on what the sentence should be if you
23 vote guilty.

24 Is that a problem for you, Ms. Martinez?

25 PROSPECTIVE JUROR: Yes, a little bit.

1 MR. KATCHEN: Could you explain?

2 PROSPECTIVE JUROR: It's hard to put
3 somebody away if you're not really sure.

4 THE COURT: Could you promise us if
5 selected you would deliberate without any
6 preference or discuss regarding sentence or
7 punishment?

8 I am not telling you what to answer. I
9 just want to know how you feel about it. As you
10 know way I instruct juries not to consider fear,
11 favor, sympathy or the possibility of punishment
12 when they deliberate. If you can promise us you
13 can do that, that's fine. If you can't, tell us.

14 PROSPECTIVE JUROR: I am not sure.

15 THE COURT: Are you not sure, okay.

16 Step up, counsellors.

17 (Discussion held off the record at the
18 bench.)

19 MR. KATCHEN: Ladies and gentlemen, I am
20 just going to thank you again for your patience.

21 THE COURT: Mr. Lamb.

22 MR. LAMB: Good afternoon, ladies and
23 gentlemen. It's been rather long and everybody is
24 getting a little tired. So I'll be as brief as
25 possible.

1 Let me start out with this: All of you
2 were sitting in the audience out there listening
3 while we did the first round; am I right? And I
4 think I speak fairly loudly.

5 Is there -- did you all hear the
6 questions that I had asked the previous jurors?

7 Is there anything about the questions
8 that I asked that raised a question in your mind?
9 Remember I asked questions whether you could be
10 fair about whether they could be fair and follow
11 the law as far as my client's right to be presumed
12 innocent?

13 Does anybody have a problem with that?

14 Ms. Batwin.

15 PROSPECTIVE JUROR: Yes. If your client
16 didn't testify in his behalf I would definitely
17 have a problem with that regardless of what the
18 law states. Emotionally as a human being I would
19 definitely have a problem with that.

20 MR. LAMB: Thank you.

21 PROSPECTIVE JUROR: I have the same
22 feeling.

23 MR. LAMB: Okay. How about prior bad
24 relationships that you may have been in that it
25 may affect you so that you are unable to -- would

1 be unable to listen to the testimony in this case
2 without thinking back on the relationship that you
3 had?

4 Is there anybody who had any prior
5 relationships that would affect their ability to
6 be fair and impartial?

7 I believe we spoke already, thank you.

8 Actually is there anybody -- who all here
9 has some difficulty with the language, with the
10 English language? I believe Mr. Skalny and Mr. Te
11 and Ms. Matos. Is there anybody else?

12 Ladies and gentlemen, if you are chosen
13 as jurors here do I have the assurance of you of
14 each and every one of you that you would give the
15 defendant the same fair trial that you would want
16 if you were sitting where he is sitting? Can you
17 all give me that assurance?

18 PROSPECTIVE JURORS: Yes.

19 MR. LAMB: Thank you.

20 THE COURT: We had a discussion at the
21 sidebar regarding crime victims. You want me to
22 put that question?

23 MR. KATCHEN: Yes, Judge.

24 THE COURT: The question members of the
25 panel, have you or anyone close to you ever been

1 the victim of a crime?

2 I think Ms. Verone we talked about this
3 already.

4 Anybody else?

5 Have any of you or anyone close to you,
6 close friend or relative, have ever been the
7 victim of a crime? Nobody else on that.

8 Okay, thank you. I am going to give the
9 lawyers two minutes to go over their notes and
10 they and I will step to the side. You are all
11 free to step out for a few minutes or you can stay
12 here. Don't discuss the case with anyone please.
13 I'm sorry we have to turn the air off.

14 PROSPECTIVE JUROR: It wouldn't be
15 anything relevant.

16 THE COURT: You want to talk?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Let's just wait until the
19 lawyers are ready and we'll bring you over.

20 (The following took place at the
21 sidebar:)

22 THE COURT: Ms. Batwin wanted to talk to
23 us but she's gone. Are we ready to go? We'll go
24 one at a time. Just for the record the
25 defendant's present at the sidebar with the

1 lawyers.

2 Number one is Ms. Batwin. Cause People?

3 MR. KATCHEN: In fairness it is going to

4 be a cause.

5 THE COURT: Consent?

6 MR. LAMB: Consent.

7 THE COURT: For cause on consent.

8 Next is Ms. Cifelli. Cause People?

9 MR. KATCHEN: Yes.

10 MR. LAMB: Consent.

11 THE COURT: For cause on consent.

12 Next is Ms. Verone. Cause People?

13 MR. KATCHEN: Yes.

14 MR. LAMB: Consent.

15 THE COURT: For cause on consent.

16 Next is Mr. Gill. Cause People?

17 MR. KATCHEN: No.

18 THE COURT: Defense?

19 MR. LAMB: No.

20 THE COURT: Peremptory People?

21 MR. KATCHEN: No.

22 THE COURT: Defense?

23 MR. LAMB: No.

24 THE COURT: So, Carmine, he becomes

25 Juror 12.

1 THE CLERK: Twelve.

2 THE COURT: We don't know about Number 4.

3 Ms. Fernandez. Wait a minute we have twelve.

4 Technically we are on alternates now. You get two
5 peremptories per seat as you know.

6 MS. RAJESWARI: Yes, Judge.

7 THE COURT: Seat one, alternate seat one,
8 Ms. Fernandez. Cause People?

9 MR. KATCHEN: Yes.

10 MR. LAMB: Consent.

11 THE COURT: Cause on consent.

12 MR. LAMB: How many alternates do we
13 have?

14 THE COURT: Normally we pick two. Since
15 we don't know about Number 4, I think we should
16 pick three or four if we can. That may require
17 another round I don't know.

18 Next is Ms. Dellauniversita. Cause
19 People?

20 MR. KATCHEN: People cause.

21 MR. LAMB: Consent.

22 THE COURT: For cause on consent.

23 Next is Mr. Skalny. Cause People?

24 MR. KATCHEN: Yes.

25 MR. LAMB: He can't speak English.

1 THE COURT: That's very true. That's
2 consent?

3 MR. KATCHEN: Yes.

4 MR. LAMB: Yes.

5 THE COURT: Mr. Lamb?

6 MR. LAMB: Yes.

7 THE COURT: For cause on consent.

8 Next is Martinez. Cause People?

9 MR. KATCHEN: Yes.

10 MR. LAMB: Yes.

11 THE COURT: For?

12 MR. LAMB: Consent.

13 THE COURT: For cause on consent.

14 Next is Mr. Beckett. Cause People?

15 MR. KATCHEN: No.

16 THE COURT: Defense?

17 MR. LAMB: No.

18 THE COURT: Peremptory People?

19 MR. KATCHEN: No.

20 THE COURT: Defense?

21 MR. LAMB: No.

22 THE COURT: Okay. Beckett becomes

23 Alternate 1, Carmine.

24 THE CLERK: Yes, Judge.

25 THE COURT: Next is Ms. Matos. Cause

1 People?

2 MR. KATCHEN: Yes.

3 MR. LAMB: Can't speak English. Consent.

4 THE COURT: Cause on consent.

5 Next is Ms. Carbajal. Cause People?

6 MR. KATCHEN: Yes.

7 THE COURT: Defense?

8 MR. LAMB: Consent.

9 THE COURT: For cause on consent.

10 Next is Mr. Tam. Cause People?

11 MR. KATCHEN: Yes.

12 MR. LAMB: Consent.

13 THE COURT: For cause on consent.

14 Next seat is empty. She had to go to the
15 doctor. Next is seat 14, Mr. Te. Cause People?

16 MR. KATCHEN: Yes.

17 MR. LAMB: Can't speak English.

18 THE COURT: Cause on consent.

19 Next is Ms. Thomas. Cause People?

20 MR. KATCHEN: No.

21 THE COURT: Defense?

22 MR. LAMB: No.

23 THE COURT: Peremptory People?

24 MR. KATCHEN: No.

25 THE COURT: Defense?

1 MR. LAMB: Yes.

2 THE COURT: So that's your first
3 challenge for second alternate seat.

4 And last is Ms. Pasyukova. Cause People?

5 MR. KATCHEN: Yes. She indicates she
6 wouldn't be able to be fair.

7 MR. LAMB: Consent.

8 THE COURT: For cause on consent.

9 We might lose a juror. I don't know what
10 this guy Number 4 is going to say. He is coming
11 in at two. I have two other cases to handle. I
12 suggest we break till two, deal with him and then
13 we'll deal with the rest of these people.

14 MR. LAMB: It may play a role how we
15 handle the rest of the alternates too.

16 THE COURT: I understand that.

17 How many people are out there?

18 THE CLERK: 24.

19 MS. RAJESWARI: You want to do it
20 together?

21 THE COURT: I don't know how many cause
22 challenges there will be.

23 MS. RAJESWARI: We'll put them in one
24 round.

25 (The following took place in open court:)

1 THE CLERK: Come to order. The
2 following jurors have been selected for this case.
3 Amardeep Gill and Charles Beckett you have been
4 chosen for this case. Remain seated.

5 Everyone else in the jury box stand. Go
6 out in the hallway. You'll get information that
7 you have to return to central jury now for your
8 next case.

9 (Prospective jurors not chosen left the
10 courtroom.)

11 THE COURT: Okay, Mr. Gill and
12 Mr. Beckett, you have heard you have been
13 selected. We are going to excuse you until 2 p.m.
14 We would like you to be in a jury room in the
15 building, the court officers will show you where
16 you are to be, at two o'clock. We'll get you back
17 in shortly after.

18 Please don't discuss the case or try and
19 do any research on your own. Thank you very much.
20 Enjoy your lunch. You can step out now.

21 COURT OFFICER: I will bring them right
22 upstairs.

23 (Two sworn jurors left the courtroom.)

24 THE COURT: Everyone else we're not done.
25 I know that's not what you want to hear but we're

1 not done. We need to pick a few more people and
2 we are going to do that this afternoon 2 o'clock.

3 Thanks for your patience. We ask you to
4 be in central jury where you were this morning.
5 Don't come here, please go there and the officers
6 will bring you over. Don't discuss the case and
7 have a good lunch.

8 (Prospective jurors left the courtroom.)

9 THE CLERK: Everyone step out. Thank
10 you.

11 THE COURT: 2 o'clock and we'll talk
12 to --

13 MS. RAJESWARI: Juror Number 4.

14 THE COURT: Juror Number 4. Omar
15 Pereyra. And than we'll get on the record to see
16 how you want to proceed.

17 THE CLERK: Trial second call.

18 AFTERNOON SESSION.

19 THE CLERK: Take seats. Come to order.
20 All parties are present.

21 THE COURT: Well, I suppose we should
22 bring Mr. Pereyra in?

23 MR. KATCHEN: Yes.

24 MR. LAMB: Yes.

25 THE COURT: Right?

1 MR. LAMB: Yes.

2 THE CLERK: Juror Number four. Please
3 bring in Mr. Pereyra.

4 MR. KATCHEN: I am also turning over to
5 Mr. Lamb a photo of 40 Silverton Terrace that I
6 will use during the course of the trial. He can
7 keep that.

8 MR. LAMB: Acknowledge receipt.

9 COURT OFFICER: Are you ready?

10 THE COURT: Yes.

11 (Juror Number 4 entered courtroom.)

12 THE CLERK: Juror Number four is
13 present.

14 THE COURT: He can have a seat. Just
15 have any seat, Mr. Pereyra. I'm sorry, are you
16 having some kind of difficulty? Can you tell us
17 what it is?

18 PROSPECTIVE JUROR: Yes, sir. Pretty
19 much, you know, I have anxiety problems and in the
20 past I have had panic attacks. And you know when
21 we were first here and I had explained to you
22 about what was going on at work and then I
23 understood the reason you retained me.

24 You know, I really thought this was
25 something I could do. But as you know the time

1 comes dragging on, I am just getting increasingly
2 anxious about not being at work.

3 You know I have been prescribed Xanax.
4 Not like yesterday, just in the past to deal with
5 my anxiety issues. I mean obviously I am a
6 functioning person. I am a director of operations
7 at work. I manage a team of people. But I just
8 feel that this is just too much for me right now.

9 And, you know, obviously I have been
10 having problems sleeping. And I just don't think
11 I am going to be able to sit here and concentrate
12 and do what I need to do as a jury member because
13 I am just stressed out.

14 THE COURT: Counsellors, you want to step
15 up a moment please?

16 (Discussion held off the record at the
17 bench.)

18 THE COURT: Mr. Pereyra, I am going to
19 ask you to step out of the courtroom for just a
20 moment. We are going to make a brief record and I
21 will bring you right back in.

22 We are going to have Mr. Pereyra just
23 step out in the hall for a minute. Not in the
24 jury room just in the hall.

25 COURT OFFICER: Okay.

1 (Juror Number 4 left the courtroom.)

2 THE COURT: Okay, he's left the
3 courtroom. Counsellors, make your record please.

4 MR. LAMB: It would be my feeling based
5 on what he just said that he could not be truly
6 helpful as a juror for either side. His anxieties
7 and concerns about work is too distracting.
8 Although I'm sorry to see him go, I was happy with
9 his original answers when we originally questioned
10 him, what he is saying now I have to take at face
11 value and if so I think he would be a less than
12 desirable juror.

13 THE COURT: Grossly unqualified is the
14 standard for a sworn juror. You think he is
15 grossly unqualified for reasons we didn't know
16 when he was selected?

17 MR. LAMB: I believe so.

18 MR. KATCHEN: I do as well.

19 THE COURT: Mr. Rucano, this is a sworn
20 juror so I'd like to get your -- I guess the
21 People and Mr. Lamb are consenting to excuse this
22 juror?

23 MR. LAMB: Yes.

24 MR. KATCHEN: Yes.

25 THE COURT: Since he is sworn it's up to

1 him, Mr. Rucano.

2 THE DEFENDANT: I will agree with my
3 lawyer.

4 THE COURT: We'll bring him in, release
5 him and get on the record with how we're going to
6 proceed from here.

7 You can bring Mr. Pereyra back in.

8 (Juror Number 4 entered the courtroom.)

9 THE COURT: Okay. Mr. Pereyra, we've
10 discussed it and the lawyers have consented to
11 excuse you from this matter. You are excused. I
12 think you have to go back to central jury and
13 check out with them. Is that right?

14 THE CLERK: Yes, sir.

15 THE COURT: We will give him his card.

16 THE CLERK: Yes, Judge.

17 (Juror Number 4 left the courtroom.)

18 (Pause in proceedings.)

19 THE COURT: Whenever you're ready let me
20 know.

21 MR. LAMB: I'm sorry. I'm sorry, Judge.

22 THE COURT: Ready?

23 MR. LAMB: Yes.

24 THE COURT: We had selected Mr. Gill as
25 Juror Number 12. I am assuming we are simply

1 going to move him into Seat Number 11?

2 MR. LAMB: Yes, sir.

3 THE COURT: Is that on consent of
4 everybody?

5 MR. KATCHEN: Yes.

6 MS. RAJESWARI: Yes.

7 THE COURT: So Mr. Gill becomes Juror
8 Number 11.

9 Now we come up to Mr. Beckett. We dealt
10 with him at the sidebar as Alternate Number 1. I
11 don't know if he's still acceptable to both sides
12 or not.

13 You mentioned something before we broke
14 for lunch you shouldn't be charged with your
15 alternate challenge to Ms. Thomas. We can get to
16 that in a minute.

17 The first question is Mr. Beckett. Since
18 we only have eleven, now twelve jurors he would be
19 the twelve and we dealt with him as an alternate.
20 We didn't deal with him as one of the first
21 twelve.

22 Now if you want to simply leave him in
23 place then we make him Juror Number 12 there is no
24 challenge as to him. And you would not be -- he
25 would not be considered an alternate.

1 MR. LAMB: Considered one of the twelve
2 jurors?

3 THE COURT: Regular juror. When we
4 finish with the first eleven now, the situation
5 was, as I understand, Carmine, correct me if I am
6 wrong, People have used ten, defense had used
7 eleven. So you follow me?

8 MR. LAMB: Yes.

9 THE COURT: So without even getting into
10 the alternate issue Beckett is now up for
11 consideration as Juror Number 12, and if you want
12 to deal with it in terms of your regular
13 challenges not having reached the alternate
14 status, yet you still have four, the People have
15 five.

16 MR. LAMB: If I would exercise it would
17 be my peremptory number twelve?

18 THE COURT: Correct.

19 Now on the other hand if both sides are
20 satisfied with him, then we'll simply make him
21 Juror Number 12 and then I will address
22 Ms. Thomas's issue.

23 MR. LAMB: May I just have a moment to
24 confer with my client?

25 THE COURT: Sure.

1 (Discussion held off the record between
2 the defendant and Mr. Lamb.)

3 MR. LAMB: Judge, may we approach?

4 THE COURT: Sure.

5 (Discussion held off the record at the
6 bench.)

7 THE COURT: Counsellors, we're going to
8 move everybody up and make Mr. Gill Number 11.

9 MR. LAMB: That's acceptable to the
10 defense.

11 MR. KATCHEN: People as well.

12 THE COURT: Make your record as to
13 Mr. Beckett please.

14 MR. LAMB: Yes, Judge. When I left the
15 building today I perhaps made an error in that as
16 I was leaving the building walking up Stuyvesant,
17 there was a corrections officer who was also an
18 acquaintance who was standing outside, engaged me
19 in conversation about the trial.

20 We discussed the trial for several
21 minutes. When we had finished discussing it I
22 noticed that there was an individual standing very
23 close, within three or four feet with his back to
24 us, seemingly looking at his cell phone.

25 I did not recognize, see who the person

1 was at the time that I was talking. As soon as I
2 finished talking and turned, he also turned and it
3 turned out to be Mr. Beckett.

4 THE COURT: So --

5 MR. LAMB: I believe -- I am fairly
6 convinced that he was certainly close enough to
7 hear the conversation.

8 THE COURT: Your application is what?

9 MR. LAMB: Would be to challenge him.

10 THE COURT: For cause?

11 MR. LAMB: For cause.

12 THE COURT: He hasn't been sworn. A
13 cause challenge can be raised at any time prior to
14 a juror being sworn. Possibly even after sworn.
15 I am not sure about that but he hasn't been sworn.
16 I will grant the cause challenge based on what you
17 just said. That means we will have eleven jurors.

18 We'll bring the panel back, pick a
19 twelfth and pick some alternates. The alternate
20 challenge defense exercise as to Ms. Thomas, the
21 time was up for consideration and Seat Number 2, I
22 will void if that's what you want.

23 MR. LAMB: Thank you.

24 THE COURT: Void it. So once we get to
25 the alternates again you'll have two challenges

1 per alternate seat and pick as many alternates as
2 you want or as we can get.

3 How much people do we have left?

4 THE CLERK: 24.

5 THE COURT: We'll do them all.

6 MR. KATCHEN: I just want to clarify one
7 thing as to that. The voided alternate challenge
8 becomes a regular peremptory defense.

9 THE COURT: I don't follow you.

10 MR. KATCHEN: So if they started at
11 eleven as to Ms. Thomas, if they -- if we believe
12 we had twelve and we started on alternates and
13 they exercised peremptory challenges at that time,
14 by voiding that we now making that --

15 THE COURT: You want me to treat the
16 alternate peremptory challenge Mr. Lamb raised to
17 Ms. Thomas as one of his fifteen challenges to the
18 whole panel.

19 MR. LAMB: I would object.

20 THE COURT: I am not going to do that.

21 When he exercised that challenge he was under the
22 assumption that we had twelve jurors and in fact
23 we were working on a second alternate. I won't do
24 that. I will simply void it.

25 That's your application?

1 MR. LAMB: Yes, Judge.

2 THE COURT: I will simply void it. It
3 just won't count and when we start with the
4 alternate each side will have two challenges per
5 seat.

6 Let's bring down please Mr. Gill and
7 Mr. Beckett and we're going to bring them in one
8 at a time. Gill first.

9 COURT OFFICER: Okay.

10 (Pause in proceedings.)

11 THE COURT: You know I am toying with the
12 idea of once we swear Mr. Gill in and release
13 Mr. Beckett, I am toying with the idea given the
14 hour of bringing in the eleven sworn jurors and
15 telling them to come back Monday. I don't know
16 how you feel about that. I could keep them
17 around.

18 By the time we get the panel over here
19 it's going to be ten to three. We have 24 people.
20 We're going to be going to 4:15 or so or I will
21 keep them around and give them preliminary
22 instructions.

23 MR. LAMB: I don't have a feeling one way
24 or the other. I would accede to the Court's
25 wisdom.

1 THE COURT: People?

2 MR. KATCHEN: It would be fine to let
3 them go.

4 THE COURT: Maybe I will do that.

5 MR. LAMB: I certainly don't object.

6 THE COURT: So I will bring them in and
7 tell them we're still selecting. We've run into a
8 couple of roadblocks and we are not going to be
9 able to get to them until late in the afternoon.
10 So I will release them until Monday and tell them
11 this is not affecting our schedule and we will
12 bring them back Monday morning.

13 MR. LAMB: Very good.

14 THE COURT: All right?

15 MS. RAJESWARI: Yes.

16 THE COURT: We can bring in Mr. Gill
17 first.

18 COURT OFFICER: Okay.

19 (Juror entered courtroom.)

20 THE COURT: Counsellors, this is
21 Mr. Gill. We're going swear him in. Agreed?

22 MS. RAJESWARI: Yes.

23 MR. KATCHEN: Agreed.

24 THE COURT: You can have any seat.

25 Mr. Lamb, agreed?

1 MR. LAMB: Yes.

2 THE COURT: Sorry. We're going to swear
3 Mr. Gill. The Court is going to swear you in.

4 THE CLERK: Is your name Amardeep Gill?

5 PROSPECTIVE JUROR: Yes.

6 THE CLERK: Raise your right hand. Do
7 you solemnly swear that you will try this action
8 in a just and impartial manner and to the best of
9 your judgment render a verdict according to the
10 law and the evidence so help you God?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you, sir. What we're
13 going to do is send you into the jury room. Right
14 now our jurors are in there and bring you all back
15 in here in a few minutes. Don't discuss the case
16 with anyone and we'll see you shortly. Thank you.

17 (Juror Number 11 left the courtroom.)

18 THE COURT: Patty, after he's in the jury
19 room, you can bring in the other man.

20 COURT OFFICER: Okay.

21 (Pause in proceedings.)

22 COURT OFFICER: Are you ready, your
23 Honor?

24 THE COURT: Yes.

25 (Prospective juror entered courtroom.)

1 THE COURT: Mr. Beckett doesn't have to
2 have a seat.

3 Mr. Beckett, we're going to release you
4 from this case. Various logistical issues have
5 come up. It has nothing do with you. We are going
6 to release you from this matter. And what we're
7 going to ask you to do is go back to central jury.
8 I am not sure what happens over there. You will
9 talk to the jury clerk. They may let you go
10 entirely or may send you somewhere else.

11 Thank you very much for your patience and
12 have a good day.

13 PROSPECTIVE JUROR: You too.

14 (Prospective juror left the courtroom.)

15 THE COURT: And we can bring in the panel
16 whenever Patty gets to them.

17 MS. RAJESWARI: Can I approach?

18 (Discussion held off the record at the
19 bench.)

20 COURT OFFICER: Are you ready for the
21 sworn jurors?

22 THE COURT: Yes.

23 (Sworn jurors entered courtroom.)

24 THE SERGEANT: Sworn jurors one through
25 eleven entering.

1 (Jury roll call taken.)

2 THE CLERK: Case on trial continues. Do
3 both sides stipulate to the presence of the first
4 eleven sworn jurors? People?

5 MR. KATCHEN: So stipulated.

6 THE CLERK: Defense?

7 MR. LAMB: So stipulated.

8 THE COURT: Welcome back to those of you
9 who haven't seen me today. We've run into some
10 logistical problems. It's not the fault of either
11 party in this case. Certain issues have come up
12 with regard to various jurors and it's altered our
13 path somewhat.

14 And the bottom line is this. As you can
15 see there are eleven of you. We still need
16 another juror and we still need some alternate
17 jurors. We are bringing another panel over here,
18 the rest of the panel from this morning to
19 continue that selection process this afternoon.

20 It went slower than I thought. Again,
21 it's nobody's fault these things happen. So what
22 we are going to do is complete the jury selection
23 with the remaining twenty or so people this
24 afternoon. I don't know how long that's going to
25 take. Rather than keep you pent up in the jury

1 room for another hour and a half, we decided to
2 let you go until Monday morning.

3 This is not slowing us down. We built in
4 time. When I give you the schedule at the
5 beginning to account for this, every case has some
6 glitches in terms of scheduling. That's what
7 happened here. What we're going to do is ask you
8 to be back in the jury room 10:30. I have some
9 other cases to handle earlier, but we'll get
10 started about 10:30. By that time we'll hear
11 preliminary instructions, opening statements and
12 testimony.

13 I'm sorry we brought you down here for
14 nothing today, but we will continue to adhere to
15 the schedule. Let me just instruct you before you
16 leave as I must. Don't discuss this case with
17 each other or anyone else. Don't speak with
18 anyone about taking anything, any payment or
19 benefit in return for supplying information
20 concerning this trial.

21 Report directly to me any incident within
22 your knowledge involving any attempt by anyone to
23 improperly influence you or any other member of
24 the jury. Don't visit or view the premises or
25 place where any charged crime allegedly was

1 committed. I don't think you heard of a location.

2 Don't read, view or listen to any media
3 accounts, that includes the internet. Don't
4 attempt to research any fact, issue or law related
5 to this case. Don't form any opinion. Please
6 keep an open mind until after you begin your
7 deliberations at the end of the case.

8 Thank you again for your patience. I'm
9 sorry we weren't able to work with you this
10 afternoon but we'll stay to the schedule. Have a
11 good weekend and see you Monday at 10:30.

12 (Eleven sworn jurors left the courtroom.)

13 THE COURT: The sworn jurors have left.
14 Let's bring in -- that's on consent, by the way,
15 that I sent them home?

16 MR. LAMB: Yes.

17 MR. KATCHEN: Yes.

18 MS. RAJESWARI: Yes.

19 THE COURT: Let's bring the panel back
20 and do this again.

21 THE CLERK: Sergeant, 24 jurors please.

22 THE COURT: This will be the sixth round.

23 (Pause in proceedings.)

24 COURT OFFICER: Are you ready for the
25 panel?

1 THE COURT: Yes.

2 (Prospective jurors entered courtroom.)

3 THE COURT: Okay.

4 THE CLERK: Jurors, as you hear your
5 name, step up and have a seat in the jury box.

6 Seat Number 1, step up. John Libretti.

7 L I B R E T T I.

8 Seat two, Richard Litwon.

9 L I T W O N.

10 PROSPECTIVE JUROR: Litwon.

11 THE CLERK: Seat three. Lawrence
12 Genovese. G E N O V E S E.

13 Seat four, Joseph Lagambina.

14 L A G A M B I N A.

15 Seat five, Carol Lowe. L O W E.

16 Seat six, Jacqueline Babolato

17 B A B O L A T O.

18 Seat seven, Edward Maher. M A H E R.

19 Seat eight, Renata Tuchowska.

20 T U C H O W S K A.

21 Seat nine, Anthony Marino. M A R I N O.

22 Seat ten, Leonard Balaj. B A L A J.

23 Seat eleven, Lawrence Graziano.

24 G R A Z I A N O.

25 Seat twelve, Ryan Kielty. K I E L T Y.

1 Thirteen, Marcella Barros. B A R R O S.

2 Fourteen, Jennifer Buonincontro.

3 B U O N I N C O N T R O.

4 Fifteen, Megan Burke. B U R K E.

5 Sixteen, Catherine Po. P O.

6 Seat number 17, front row closest to the

7 window. Arthur Driscoll. D R I S C O L L.

8 That's seat 17.

9 Eighteen, Teresita Apostol A P O S T O L.

10 Nineteen, Brett Meaney. M E A N E Y.

11 Twenty, Andrew Pope. P O P E.

12 Twenty-one, Michael Romanello

13 R O M A N E L L O.

14 Twenty-two, Matthew Russell.

15 R U S S E L L.

16 Twenty-three, Janet Melendez.

17 M E L E N D E Z.

18 Twenty-four, step up. William McMillan.

19 M C M I L L A N.

20 Twenty-four prospective jurors seated.

21 THE COURT: Okay, welcome back. Thank

22 you very much for your patience. We'll try to get

23 through this as quickly as we can. We are doing

24 all 24 people who remain so if you can't hear me

25 out in the front row let me know. I will shout.

1 Perhaps you could do the same. My questions don't
2 change so I will just launch into this.

3 Do any of you know the lawyers or the
4 defendant all of whom have been introduced to you?

5 Do any of you -- did any of you recognize
6 the names of the potential witnesses I read
7 earlier today?

8 This is Mr. Marino. Who do you know?

9 PROSPECTIVE JUROR: Yes. I think Officer
10 Lloyd.

11 THE COURT: Officer Lloyd.

12 PROSPECTIVE JUROR: And I think a
13 detective also.

14 THE COURT: Are you a police officer?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: How long have you been a
17 police officer?

18 PROSPECTIVE JUROR: Seven years.

19 THE COURT: Have you worked with these
20 men?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: You know them personally?

23 PROSPECTIVE JUROR: Yes. I don't off
24 duty I don't hang out with them but I see them at
25 work.

1 THE COURT: If you were selected as a
2 juror here and they were witnesses in the case
3 could you evaluate their credibility objectively
4 and impartially or would you be influenced somehow
5 --

6 PROSPECTIVE JUROR: I still see them. I
7 just saw Officer Lloyd yesterday.

8 THE COURT: You think that might
9 influence you somehow?

10 PROSPECTIVE JUROR: Could be. I don't
11 know.

12 THE COURT: Could be. I will let the
13 lawyers follow that up if they want.

14 Anybody else? Anybody want to hear the
15 names read again?

16 Okay. Do any of you think you know
17 anything about this case apart from what you heard
18 here in court this morning?

19 Are any of you or anyone close to you
20 involved in law enforcement? Mr. Marino already
21 answered this. Anybody else? I will just jump
22 around here. Mr. Maher.

23 PROSPECTIVE JUROR: My father is a
24 detective.

25 THE COURT: Currently?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: NYPD?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Is that going to have any
5 affect of your ability to be a fair juror?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Any other hands? Stick with
8 the jury box. Ms. Babolato.

9 PROSPECTIVE JUROR: My cousin is a
10 captain.

11 THE COURT: Police officer?

12 PROSPECTIVE JUROR: Captain in the NYPD.

13 THE COURT: Is that going to have an
14 affect on your ability to be a fair juror?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Anyone else in the jury box?
17 Ms. Burke.

18 PROSPECTIVE JUROR: My husband.

19 THE COURT: A police officer?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Would that have any affect on
22 your ability to be fair?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Thank you.

25 Mr. Libretti.

1 PROSPECTIVE JUROR: And you my girlfriend
2 is a police officer and neighbor is a captain.

3 THE COURT: Same question. Is that going
4 to have any affect on your ability to be fair?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Other hands. In the jury box
7 anybody else?

8 Let me get out to the front row.

9 Mr. Driscoll.

10 PROSPECTIVE JUROR: My cousin.

11 THE COURT: Would that have any affect on
12 your ability to be fair?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Thank you.

15 Mr. Pope.

16 PROSPECTIVE JUROR: Cousin and next door
17 neighbor.

18 THE COURT: What do you think? Would
19 that affect your ability to be fair?

20 PROSPECTIVE JUROR: I don't think so.

21 THE COURT: Anyone else?

22 I got everybody.

23 Are any of you or anyone close to you to
24 your knowledge involved in the legal field in any
25 way as a lawyer, a paralegal, employee of a law

1 firm, a prosecutor's office? Anything of that
2 sort?

3 Mr. Maher.

4 PROSPECTIVE JUROR: My uncle's a lawyer.

5 THE COURT: What kind of law is he
6 involved in, if you know?

7 PROSPECTIVE JUROR: Civil law.

8 THE COURT: Civil law. Does he do any
9 criminal law, practice any criminal law?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Safe to say that would have
12 no effect here on you?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Anyone else?

15 Mr. Meaney.

16 PROSPECTIVE JUROR: Yes, I am a director
17 of contracts in the New York City Parks
18 Department.

19 THE COURT: You work with contracts?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Are you a lawyer yourself?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Is there anything about your
24 occupation that would have any effect on your
25 ability to be a fair and impartial juror?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Thank you.

3 Anyone else on that question?

4 Have any of you or anyone close to you to
5 your knowledge ever been the victim of a crime?

6 Ms. Lowe.

7 PROSPECTIVE JUROR: I have a very close
8 friend of mine was the victim of a crime.

9 THE COURT: Can you tell me what kind of
10 crime?

11 PROSPECTIVE JUROR: Driving a car,
12 stabbed in the neck.

13 THE COURT: Did he survive?

14 PROSPECTIVE JUROR: He did.

15 THE COURT: How long ago was this?

16 PROSPECTIVE JUROR: That's six years ago.

17 THE COURT: Was there anybody arrested?

18 PROSPECTIVE JUROR: Not that I am aware
19 of.

20 THE COURT: Is there anything about that
21 event that would prevent you from being a fair
22 juror in this case?

23 PROSPECTIVE JUROR: Probably not.

24 THE COURT: Anyone else in the jury box?
25 Mr. Driscoll.

1 PROSPECTIVE JUROR: I was mugged many
2 years ago.

3 THE COURT: Anybody arrested?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Were you injured?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Is there anything about that
8 event that would prevent you from being fair here?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you.

11 Anyone else?

12 PROSPECTIVE JUROR: Or people we know?

13 THE COURT: Yes.

14 PROSPECTIVE JUROR: I do have two
15 situations where there actually were rape charges,
16 sister-in-law and a student.

17 THE COURT: I want to ask you a little
18 bit about that. Would you feel more comfortable
19 discussing that privately?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: We'll talk to you a little
22 later about that. Thank you.

23 Anyone else on this question, crime
24 victims?

25 Again we can talk privately about

1 anything and the question is have you or anyone
2 close to you to your knowledge ever been a
3 defendant in any kind of a criminal proceeding?

4 Mr. Meaney, you want to discuss that
5 privately?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: We'll do that. Anyone else?
8 Have any of you ever been a witness in
9 any kind of a courtroom proceeding?

10 Mr. Balaj.

11 PROSPECTIVE JUROR: Yes, I was a witness
12 in Staten Island, Targee Street.

13 THE COURT: On Targee Street?

14 PROSPECTIVE JUROR: About two years ago.

15 THE COURT: Some kind of criminal case I
16 gather, Targee Street. Trial or hearing?

17 PROSPECTIVE JUROR: I think it was a
18 trial.

19 THE COURT: Was there anything about that
20 experience as a witness that would prevent you
21 from being a fair juror?

22 PROSPECTIVE JUROR: No. Absolutely not.

23 THE COURT: I saw some other hands.

24 Mr. Libretti.

25 PROSPECTIVE JUROR: I was a witness at a

1 bank robbery.

2 THE COURT: You never ended up on the
3 witness stand?

4 PROSPECTIVE JUROR: No.

5 THE COURT: How long ago was that?

6 PROSPECTIVE JUROR: Two years ago.

7 THE COURT: So the case resolved itself
8 without your participation I gather?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Would that event whatever you
11 witnessed have any affect here?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Anyone else?

14 Mr. Marino.

15 PROSPECTIVE JUROR: Yes. Through the
16 scope of my employment.

17 THE COURT: Sure. You probably testified
18 at trials, hearings, Grand Jury proceedings?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Anything about these
21 experiences on the witness stand that would
22 prevent you from being a fair juror?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Anyone else in the witness
25 box? Anybody in the front row?

1 Okay. Have any of you ever been a
2 litigant in a civil action or proceeding, that is
3 a plaintiff or a defendant, in any kind of a civil
4 lawsuit, civil action of any sort?

5 Mr. Graziano.

6 PROSPECTIVE JUROR: Yes. New York city
7 Transit Authority.

8 THE COURT: Okay, some kind of a civil
9 case.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: How long ago was this?

12 PROSPECTIVE JUROR: Two years ago.

13 THE COURT: Is it over?

14 PROSPECTIVE JUROR: It's over.

15 THE COURT: Is there anything about that
16 experience as a litigant that would prevent you
17 from being a fair juror?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Mr. Kielty.

20 PROSPECTIVE JUROR: My wife is in a suit
21 right now.

22 THE COURT: I see. Some kind of civil
23 lawsuit?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Are you involved as a

1 witness?

2 PROSPECTIVE JUROR: I think I am going to
3 be a witness.

4 THE COURT: That's still pending?

5 PROSPECTIVE JUROR: Yes. It's supposed
6 to be in two weeks it's supposed to start.

7 THE COURT: Did we talk about that?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: We did talk about it. If you
10 were selected as a juror here would that pending
11 lawsuit have any affect on your ability to be a
12 fair juror in this criminal case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Thanks.

15 Anybody else on this question?

16 Have any of you ever been a juror before,
17 served as a juror?

18 Mr. Graziano, when please?

19 PROSPECTIVE JUROR: Approximately like
20 twenty years ago.

21 THE COURT: Civil or criminal if you
22 remember.

23 PROSPECTIVE JUROR: Criminal.

24 THE COURT: Don't tell us how it ended.
25 Did the jury reach a verdict?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Anything about that
3 experience that would prevent you from being able
4 to sit as a juror here?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Other hands? I think I saw
7 someone else.

8 Ms. Lowe.

9 PROSPECTIVE JUROR: It was about twenty
10 years ago. It was a civil case.

11 THE COURT: Did the jury reach a verdict?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Was there anything about that
14 experience as a juror that would prevent you from
15 sitting in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Anyone else in the jury box?

18 Anybody in the front row?

19 Have any of you ever served as a Grand
20 Juror? Nobody on that.

21 Okay. Mr. Libretti, are you employed?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: What type of work do you do?

24 PROSPECTIVE JUROR: Bank.

25 THE COURT: Thank you.

1 Mr. Listwon, what do you do?

2 PROSPECTIVE JUROR: Not employed.

3 THE COURT: Thank you.

4 Mr. Genovese.

5 PROSPECTIVE JUROR: Vice president, Wall
6 Street.

7 THE COURT: Thank you.

8 Mr. Lagambina?

9 PROSPECTIVE JUROR: Maintenance worker
10 and landscaping business.

11 THE COURT: Thank you.

12 Ms. Lowe.

13 PROSPECTIVE JUROR: Retired teacher and
14 part-time recruiter for Kingsboro Community
15 College.

16 THE COURT: Thanks.

17 Ms. Babolato.

18 PROSPECTIVE JUROR: Cashier for Honda.

19 THE COURT: Thank you.

20 Mr. Maher.

21 PROSPECTIVE JUROR: New York City fireman
22 and a nurse.

23 THE COURT: Thank you.

24 Ms. Tuchowska.

25 PROSPECTIVE JUROR: I am a registered

1 nurse.

2 THE COURT: Thank you.

3 Mr. Marino, we know what you do.

4 Mr. Balaj.

5 PROSPECTIVE JUROR: Restaurant.

6 THE COURT: Thank you.

7 Mr. Graziano.

8 PROSPECTIVE JUROR: Bus operator New York
9 City Transit.

10 THE COURT: Thank you.

11 Mr. Kielty. Am I pronouncing that right?

12 PROSPECTIVE JUROR: Yes. Vice president
13 telecommunication company.

14 THE COURT: Thank you.

15 Ms. Barros.

16 PROSPECTIVE JUROR: High school
17 principal.

18 THE COURT: Thank you.

19 Ms. Buonincontro.

20 PROSPECTIVE JUROR: Cosmetologist.

21 THE COURT: Thank you.

22 Ms. Burke.

23 PROSPECTIVE JUROR: Human resources.

24 THE COURT: Thank you.

25 Ms. Po.

1 PROSPECTIVE JUROR: Medical assistant.

2 THE COURT: Thank you. Medical

3 assistant --

4 PROSPECTIVE JUROR: In a doctor's office.

5 THE COURT: Thank you.

6 Mr. Driscoll.

7 PROSPECTIVE JUROR: High school teacher.

8 THE COURT: Thank you.

9 Ms. Apostol.

10 PROSPECTIVE JUROR: Registered nurse.

11 THE COURT: Thank you.

12 Mr. Meaney.

13 PROSPECTIVE JUROR: Contracts.

14 THE COURT: Right. You told me. Thanks.

15 Mr. Pope.

16 PROSPECTIVE JUROR: In sales for a paint

17 company.

18 THE COURT: Thank you.

19 Mr. Romanello.

20 PROSPECTIVE JUROR: Unemployed.

21 THE COURT: Thank you.

22 Mr. Russell.

23 PROSPECTIVE JUROR: Bond trader Wall

24 Street firm.

25 THE COURT: Thank you.

1 Ms. Melendez.

2 PROSPECTIVE JUROR: Supervisor.

3 THE COURT: Thank you.

4 Mr. McMillan.

5 PROSPECTIVE JUROR: Verizon.

6 THE COURT: Thank you all for that
7 information.

8 Let me go through these principles of
9 law. You don't have to know any law in order to
10 be a juror. It is my job to explain the law to
11 the jury. You do however have to agree to accept
12 the law if you can in order to insure that both
13 sides receive a fair trial. So I will go through
14 these principles again. I am going to paraphrase
15 where I can.

16 As you know now if you didn't before an
17 indictment is evidence of nothing. The indictment
18 is the instrument which contains the charges in
19 the case but it's not evidence of anything. The
20 mere fact that the defendant has been indicted is
21 as I say evidence of nothing and in particular
22 it's not evidence of guilt.

23 Can everybody accept this proposition in
24 our law? Is there anybody who cannot accept this
25 proposition in our criminal law?

1 If selected as a juror you would be
2 called upon to deliberate with eleven other people
3 at the end of the trial in an effort to reason
4 together and arrive at a final unanimous verdict
5 or verdicts.

6 Do any of you feel you could not
7 deliberate with eleven other people if called upon
8 to do so?

9 Under our law everyone accused of a crime
10 and brought to trial is presumed innocent unless
11 or until he is proved guilty beyond a reasonable
12 doubt. The defendant in this case is presumed
13 innocent, and to put this another way a defendant
14 is never required to prove his innocence.

15 On the contrary, the People represented
16 by the District Attorney having accused the
17 defendant of the crimes charged have the burden of
18 proving him guilty beyond a reasonable doubt. The
19 People carry this burden of proof throughout the
20 trial. It never shifts. It always remains on the
21 People and the presumption of innocence remains
22 with every defendant throughout every criminal
23 trial.

24 Is there anyone amongst this panel who
25 cannot now in his or her own mind grant the

1 defendant this presumption of innocence?

2 As I said in a criminal case the burden
3 of proof is entirely on the People and remains on
4 them throughout the trial. A defendant's not
5 required to prove anything. A defendant's not
6 required to disprove anything. The entire burden
7 of proof is on the People and remains on them
8 throughout the trial.

9 Is there anyone who cannot accept this
10 rule in our criminal law?

11 Mr. Genovese, what's your feeling on
12 that?

13 PROSPECTIVE JUROR: I just have a problem
14 with someone not coming up and speaking for
15 themselves.

16 THE COURT: Anybody else have a feeling
17 on this one way or the other? Everybody slow
18 down. Let me make sure I get hands.

19 Mr. Libretti, what's your feeling?

20 PROSPECTIVE JUROR: I agree with that. I
21 feel he should speak to the case.

22 THE COURT: And I saw Ms. Lowe. Your
23 feeling as well?

24 PROSPECTIVE JUROR: I feel the same way
25 they would need to get up and I guess defend their

1 case.

2 THE COURT: Even though the law is
3 otherwise?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Ms. Babolato, you too?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Mr. Kielty, same thing?

8 PROSPECTIVE JUROR: Same thing.

9 THE COURT: Ms. Barros?

10 PROSPECTIVE JUROR: Not maybe this
11 particular issue but the presumed innocent, that's
12 a problem for me, and I think maybe privately to
13 discuss.

14 THE COURT: We'll talk to you privately.
15 Ms. Lowe.

16 PROSPECTIVE JUROR: I was thinking the
17 same thing in this particular case. I am
18 presuming innocence you know because it's a very
19 emotional case and very violent crime, I don't
20 know if I can be impartial entirely.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: Without emotions
23 getting in the way. I have to be honest.

24 THE COURT: Anybody else in the jury box
25 have this issue? In the audience in the front

1 row?

2 Okay. Those of you who already expressed
3 an opinion up to this point on this issue whether
4 it's the presumption of innocence or the burden of
5 proof I will probably also be referring to the
6 next question or issue I am going to put before
7 you. And that is this if a defendant does not
8 testify in a criminal trial that is not a factor
9 from which an inference unfavorable to such
10 defendant may be drawn.

11 Mr. Genovese, is that an issue for you?

12 PROSPECTIVE JUROR: Yes. Otherwise I
13 would take from the feeling of just staring at the
14 person throughout the whole trial and making my
15 own assumption aside from the facts.

16 THE COURT: Okay. Mr. Libretti, same
17 thing?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Ms. Lowe, is that your issue
20 as well as others I guess? I am not trying to put
21 words in anybody's mouth. Tell me what you think.

22 Ms. Babolato, same thing?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Mr. Kielty?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Anybody in the audience the
2 front row on this issue?

3 Okay. I defined earlier today the
4 standard of proof required for a conviction. In
5 every criminal case that standard as you know now
6 if you didn't before is called proof of guilt
7 beyond a reasonable doubt.

8 Did all of you hear that definition when
9 I read it earlier today?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Does anybody want to hear it
12 again? I am happy to read it again if you'd like
13 me to. I am getting no takers on that.

14 Keep that definition in mind. Let me
15 remind you that it is the duty of each sworn trial
16 juror carefully to review, weigh and consider all
17 the evidence. If after doing this you find that
18 the People have not proved the defendant's guilt
19 beyond a reasonable doubt as I have defined the
20 term, then you must find the defendant not guilty.

21 On the other hand, if you are satisfied
22 that the People have proved the defendant's guilt
23 beyond a reasonable doubt as I defined the term
24 then you must find the defendant guilty.

25 Will you promise us now that if you are

1 selected as a juror in this case you will in your
2 final deliberations follow and apply the standard
3 of proof that I have defined for you, that is
4 proof beyond a reasonable doubt? Anybody who
5 could cannot make us that promise?

6 All right. I will remind you that a
7 deliberating jury is not permitted to consider the
8 subject of punishment. If there is to be any
9 sentencing following a verdict that's for the
10 Court and the Court alone to deal with. The jury
11 has no role to play in that. The jury is not
12 permitted to discuss the subject of possible
13 punishment or penalty in their deliberations. The
14 jury may not include any sentencing recommendation
15 in their verdict.

16 Can you promise us now that if selected
17 you will render your verdict free from fear, favor
18 or sympathy, without considering any possibility
19 of sentence or punishment.

20 Mr. Lowe, you already expressed a feeling
21 about sympathy.

22 PROSPECTIVE JUROR: I want to be
23 objective but I don't know if I could.

24 THE COURT: Anyone else on this issue?
25 Mr. Libretti.

1 PROSPECTIVE JUROR: I agree.

2 THE COURT: Anybody else?

3 Ms. Babolato.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Anyone else?

6 Okay. In this case it's likely that the
7 jury will hear from police witnesses. Police
8 officers take the same oath as anyone else. The
9 mere fact that a witness is a police officer does
10 not make that witness any more or any less
11 credible than anyone else.

12 Do any of you have any feelings about the
13 police or have you had any experiences with the
14 police which would lead you to give a police
15 officer's testimony greater or lesser weight than
16 anyone else's merely because of the officer's
17 occupation? Anybody have that feeling one way or
18 the other?

19 Mr. Marino, what do you think? You would
20 evaluate a police witness just as you would anyone
21 else?

22 PROSPECTIVE JUROR: I have my feelings on
23 it. I have been up there numerous times. I know
24 how nerve wracking it is to be up there as a cop.
25 I think they hold a lot of valuable information,

1 probably a little greater because they were at the
2 scene of the crime.

3 THE COURT: I don't know if that's the
4 case here.

5 PROSPECTIVE JUROR: I am just saying for
6 most instances an arresting officer so he must
7 have been at the scene of the crime. So he must
8 hold more information than the rest.

9 THE COURT: Okay. We'll step to the side
10 before the lawyers talk to you. We'll talk to a
11 couple of people.

12 (The following took place at the
13 sidebar:)

14 THE COURT: We're at the sidebar with the
15 lawyers. Your client does not wish to be here?

16 MR. LAMB: No.

17 THE COURT: Mr. Balaj, could you step
18 over for a moment please?

19 (Prospective juror approached.)

20 THE COURT: I think the DA wanted to ask
21 you a couple of questions.

22 MR. KATCHEN: Mr. Balaj, you said you
23 testified as a witness in a case two years ago.
24 What was the case?

25 PROSPECTIVE JUROR: It was one of the

1 employees.

2 MR. KATCHEN: What was the case?

3 PROSPECTIVE JUROR: It was one of my
4 employees was accused of sexual abuse.

5 MR. KATCHEN: That was the case I had
6 prosecuted, you testified on his behalf, correct?

7 PROSPECTIVE JUROR: Yes. I mean I was
8 called as a manager. I was the manager.

9 MR. KATCHEN: I'll make a record now to
10 the best of my recollection your testimony
11 essentially was you didn't see anything happen.

12 PROSPECTIVE JUROR: That's what it was.

13 MR. KATCHEN: And there wasn't much
14 cross-examination on that but it was a case that I
15 did prosecute.

16 THE COURT: Is there anything about that
17 the fact that the DA in this case was also the DA
18 in that case that would prevent you from being
19 fair and impartial?

20 PROSPECTIVE JUROR: Absolutely not, but I
21 just -- the question was that and I needed to make
22 sure. It was very -- they asked me a couple of
23 questions and that was it.

24 THE COURT: Any other questions?

25 MR. LAMB: Anything about the incident

1 because this is a sex crime?

2 PROSPECTIVE JUROR: Yes. What happened
3 was everything whatever he said, it happened
4 outside of the restaurant. He just called me if I
5 was going to be a witness.

6 MR. LAMB: You were the defense witness?

7 PROSPECTIVE JUROR: Yes.

8 MR. LAMB: Anything involving the case
9 that you would think would carry over into this
10 case?

11 PROSPECTIVE JUROR: Not really.

12 THE COURT: Okay.

13 MR. KATCHEN: Just to the extent you
14 couldn't remember.

15 PROSPECTIVE JUROR: Yes.

16 MR. KATCHEN: Did you think that you were
17 treat fairly by me especially when you were asked?

18 PROSPECTIVE JUROR: Personally it was a
19 very, very -- I was scared you know. If he sat in
20 the witness stand I was very scared so I didn't
21 feel comfortable at all. That was something that
22 I didn't have anything, speaking very slow and you
23 have to speak louder.

24 MR. LAMB: Let me ask you this both sides
25 are going to have an opportunity when the witness

1 takes the stand to cross-examine which some people
2 consider badgering a witness.

3 Are you going to feel sympathetic toward
4 the witness to the point where you might think
5 that one of us is bullying the witness?

6 PROSPECTIVE JUROR: Not really. I mean I
7 was -- I would look at it. That's my job is to
8 look at the facts but I just want to mention it
9 was an experience that is going to leave
10 something.

11 MR. LAMB: Thank you.

12 THE COURT: Thank you, sir. I will let
13 you resume your chair.

14 Ms. Barros.

15 (Prospective juror approached the
16 sidebar.)

17 THE COURT: I think you were going to
18 talk about the presumption of innocence.

19 PROSPECTIVE JUROR: So I have been
20 hearing everything that's going on all day and the
21 thing that I am struggling with is that in my mind
22 I look at him I see him as guilty. I see him as
23 guilty. I don't know if --

24 THE COURT: You must be a tough
25 principal.

1 PROSPECTIVE JUROR: But I have had to
2 deal with female students that have been raped
3 even by people in the home. I have never been a
4 victim of a rape. My mother is a victim of sexual
5 victimization. For me it just -- I can't -- I am
6 trying to get past where I know I should do, but
7 in my mind unless the woman were to say something
8 I don't know she would have to say something so
9 convincing for me to be swayed because I see it --
10 I just see him guilty just to be honest about
11 that.

12 THE COURT: Any questions?

13 MR. LAMB: Thank you for being honest
14 about it.

15 MR. KATCHEN: Thank you.

16 THE COURT: Thank you. I will let you go
17 back.

18 Mr. Driscoll, could you step over please?

19 (Prospective juror approached.)

20 THE COURT: That's good. I think you
21 were going to talk about some people you know who
22 were crime victims.

23 PROSPECTIVE JUROR: My sister-in-law --
24 like adopted sister-in-law in the family. She was
25 very young, she was abused as a child and actually

1 raped. Just last year I teach government at high
2 school where I stupidly ask the question has
3 anyone been raped. Someone raised her hand, yes, I
4 was raped.

5 THE COURT: What do you think? Could you
6 be a fair impartial juror?

7 PROSPECTIVE JUROR: I would like to
8 believe I could.

9 MR. LAMB: The question is can you be?
10 Everybody would like to be but.

11 PROSPECTIVE JUROR: My best sense I would
12 hope I could be.

13 THE COURT: If you can give an
14 unequivocal response we would all appreciate it.
15 If you can't, you can't.

16 PROSPECTIVE JUROR: Okay. I just
17 mentioned these things. I thought it was
18 something that had to be mentioned as far as me
19 being a prospective juror to make a verdict based
20 on the evidence I believe I could do that, yes.

21 MS. RAJESWARI: Okay.

22 PROSPECTIVE JUROR: Is that not
23 unequivocal?

24 THE COURT: People speak in a colloquial
25 fashion. I think what the lawyers would like to

1 hear you say is yeah or nay, if that's possible.
2 If it's not possible, then it's not.

3 PROSPECTIVE JUROR: I am about to say I
4 think. That's the way --

5 THE COURT: That's the way people talk.

6 PROSPECTIVE JUROR: I could, yes. I
7 could give a decision based on evidence.

8 THE COURT: Okay. Any other questions?

9 MS. RAJESWARI: No.

10 MR. KATCHEN: Thank you.

11 THE COURT: Thank you, sir.

12 Mr. Meaney, could you step over please?

13 (Prospective juror approached.)

14 THE COURT: Here is Mr. Meaney. If you
15 could step over here. I believe we were going to
16 talk about crime victims.

17 PROSPECTIVE JUROR: I was convicted of a
18 misdemeanor.

19 THE COURT: I beg your pardon?

20 PROSPECTIVE JUROR: I was convicted of a
21 misdemeanor. I pleaded guilty to attempted
22 assault.

23 THE COURT: Attempted assault. How long
24 ago was this?

25 PROSPECTIVE JUROR: Twelve years ago.

1 THE COURT: It was here in Richmond
2 County?

3 PROSPECTIVE JUROR: Yes, it was.

4 THE COURT: Is there anything about that
5 experience -- that doesn't disqualify you. The
6 question is, is there anything about that
7 experience that would prevent you from being a
8 fair and impartial juror, fair to both sides?

9 PROSPECTIVE JUROR: No, your Honor.

10 THE COURT: Any questions?

11 MR. LAMB: No.

12 MR. KATCHEN: Who did you attempt to
13 assault?

14 PROSPECTIVE JUROR: It was a girlfriend.

15 MR. KATCHEN: Thank you.

16 THE COURT: Anything else?

17 MR. LAMB: No.

18 THE COURT: Anybody else?

19 Thank you, Mr. Meaney.

20 Did we get everybody who wanted to speak
21 to us? I think we did but I am not sure.

22 (The following took place in open court:)

23 THE COURT: We have one juror in the
24 bathroom. We'll continue when they get back.

25 (Pause in proceedings.)

1 MS. RAJESWARI: May I, Judge?

2 THE COURT: Yes.

3 MS. RAJESWARI: Good afternoon, ladies
4 and gentlemen. I know it's very late in the day.
5 We'll try to keep our remarks brief.

6 As you know by now I am Assistant
7 District Attorney Raja Rajeswari, along with
8 Mr. Katchen. We're going to present the case.

9 I am going to apologize in advance to the
10 potential jurors seated in the front row. I am
11 going to try to speak to everybody. If you can't
12 hear me please let me know.

13 I am not going to have occasion to speak
14 to all of you but I am going to ask some of you
15 certain questions.

16 Mr. Listwon, you said you are unemployed
17 now. What did you do before?

18 PROSPECTIVE JUROR: I used to have my own
19 business. Sell stuff to mom and pop stores, gift
20 items.

21 MS. RAJESWARI: Are you married, sir?

22 PROSPECTIVE JUROR: Yes.

23 MR. LAMB: Could we approach for one
24 second briefly?

25 (Discussion held off the record at the

1 bench.)

2 THE COURT: Everybody please keep your
3 voice up. Mr. Lamb is having a little trouble
4 hearing from his table over there.

5 MS. RAJESWARI: Are you married, sir?

6 PROSPECTIVE JUROR: Yes, I am.

7 MS. RAJESWARI: Do you have children?

8 PROSPECTIVE JUROR: Not currently living
9 with me. They are adults.

10 MS. RAJESWARI: Okay. Do you have live
11 in a private home or apartment, sir?

12 PROSPECTIVE JUROR: Apartment.

13 MS. RAJESWARI: Mr. Lagambina, are you
14 married, sir?

15 PROSPECTIVE JUROR: Yes.

16 MS. RAJESWARI: And do you live in a
17 private home or apartment?

18 PROSPECTIVE JUROR: Apartment.

19 MS. RAJESWARI: Do you have children?

20 PROSPECTIVE JUROR: Yes.

21 MS. RAJESWARI: How many?

22 PROSPECTIVE JUROR: I have two daughters
23 and a stepdaughter.

24 MS. RAJESWARI: Thank you.

25 Mr. Maher, what about you, sir?

1 PROSPECTIVE JUROR: I am engaged, private
2 house.

3 MS. RAJESWARI: Congratulations. Any
4 children yet?

5 PROSPECTIVE JUROR: No.

6 MS. RAJESWARI: Miss -- how do you
7 pronounce your last name?

8 PROSPECTIVE JUROR: Tuchowska. Divorced,
9 two children and I live in a private house.

10 MS. RAJESWARI: Ms. Po, what about you?

11 PROSPECTIVE JUROR: I am single.

12 MS. RAJESWARI: Do you live in an
13 apartment or private home?

14 PROSPECTIVE JUROR: Apartment.

15 MS. RAJESWARI: And you have no children?

16 PROSPECTIVE JUROR: No children.

17 MS. RAJESWARI: How about you --
18 actually, Ms. Burke? I didn't hear what you did
19 for a living.

20 PROSPECTIVE JUROR: Human resources.

21 MS. RAJESWARI: And are you married?

22 PROSPECTIVE JUROR: Married, live in a
23 private home, no children.

24 MS. RAJESWARI: What about you,
25 Ms. Buonincontro? Where do you live?

1 PROSPECTIVE JUROR: I live at home with
2 my mom, private house.

3 MS. RAJESWARI: Are you single?

4 PROSPECTIVE JUROR: Yes.

5 MS. RAJESWARI: Mr. Graziano, what about
6 you, sir?

7 PROSPECTIVE JUROR: Married, two grown
8 children.

9 MS. RAJESWARI: Private house or
10 apartment?

11 PROSPECTIVE JUROR: Apartment.

12 THE CLERK: Mr. Driscoll, what about
13 you?

14 PROSPECTIVE JUROR: Married, one child,
15 private home.

16 MS. RAJESWARI: Ms. Apostol.

17 PROSPECTIVE JUROR: Married, two
18 children, private home.

19 MS. RAJESWARI: Mr. Pope?

20 PROSPECTIVE JUROR: I'm single, live in a
21 private home, no children.

22 MS. RAJESWARI: Mr. Romanello.

23 PROSPECTIVE JUROR: Single, live at home
24 with my grandmother.

25 MS. RAJESWARI: Mr. Romanello, you said

1 you were unemployed. What were you?

2 PROSPECTIVE JUROR: Carpenter.

3 MS. RAJESWARI: A carpenter?

4 PROSPECTIVE JUROR: Yes.

5 MS. RAJESWARI: Mr. Russell.

6 PROSPECTIVE JUROR: Single, no children,
7 apartment.

8 MS. RAJESWARI: What about you,
9 Ms. Melendez?

10 PROSPECTIVE JUROR: Private house. Four
11 kids, private house.

12 MS. RAJESWARI: And Mr. McMillan what
13 about you?

14 PROSPECTIVE JUROR: Single. I don't have
15 any kids. Not old enough yet.

16 MS. RAJESWARI: Ladies and gentlemen, by
17 now you heard that this case involved allegations
18 of rape. You've seen -- if you were hopefully
19 paying attention, you heard Mr. Katchen and myself
20 and Mr. Lamb on a couple of rounds. You know this
21 is not a stranger situation. This is a domestic
22 situation where the parties knew each other.

23 The fact that the parties know each other
24 does that change anybody's opinion that a rape can
25 occur?

1 Mr. Maher, can two people in a
2 relationship, engaged, married or living together,
3 can a woman get raped, sir?

4 PROSPECTIVE JUROR: Yes.

5 MS. RAJESWARI: What about you, Ms. Po,
6 do you agree with him?

7 PROSPECTIVE JUROR: Yes.

8 MS. RAJESWARI: Ms. Burke?

9 PROSPECTIVE JUROR: Yes.

10 MS. RAJESWARI: Ms. Buonincontro?

11 PROSPECTIVE JUROR: I agree.

12 MS. RAJESWARI: Mr. Graziano?

13 PROSPECTIVE JUROR: Yes, I agree.

14 MS. RAJESWARI: Ms. Melendez, can two
15 people in a relationship, husband and wife,
16 boyfriend girlfriend, can rape still occur between
17 people who just know each other?

18 PROSPECTIVE JUROR: No.

19 MS. RAJESWARI: No.

20 THE COURT: She said has no personal
21 opinion.

22 MS. RAJESWARI: Mr. Russell, what about
23 you?

24 PROSPECTIVE JUROR: I agree with that.

25 MS. RAJESWARI: Mr. Pope.

1 PROSPECTIVE JUROR: I suppose so.

2 MS. RAJESWARI: You suppose you think
3 people in a relationship?

4 What about you, Ms. Apostol, what do you
5 think?

6 PROSPECTIVE JUROR: Definitely.

7 MS. RAJESWARI: Ms. Tuchowska?

8 PROSPECTIVE JUROR: Yes.

9 MS. RAJESWARI: Can I have your assurance
10 if some of you are picked as jurors in this
11 particular case you will keep an open mind and
12 listen to the witnesses in the case?

13 If you hear that a victim of rape did not
14 immediately leave the situation or did not
15 immediately report it, can you still keep an open
16 mind and listen to why or what that person had to
17 say? Can I have your assurance, sir?

18 PROSPECTIVE JUROR: Yes.

19 MS. RAJESWARI: What about you?

20 PROSPECTIVE JUROR: Yes.

21 MS. RAJESWARI: Sir?

22 PROSPECTIVE JUROR: Yes.

23 MS. RAJESWARI: What about you,
24 Ms. Tuchowska?

25 PROSPECTIVE JUROR: Yes.

1 MS. RAJESWARI: Mr. Driscoll?

2 PROSPECTIVE JUROR: Yes.

3 MS. RAJESWARI: Ms. Apostol?

4 PROSPECTIVE JUROR: Yes.

5 MS. RAJESWARI: Ms. Melendez, what about
6 you, ma'am?

7 PROSPECTIVE JUROR: Yes.

8 MS. RAJESWARI: Okay. Mr. Romanello?

9 PROSPECTIVE JUROR: Yes.

10 MS. RAJESWARI: Mr. Russell?

11 PROSPECTIVE JUROR: Yes.

12 MS. RAJESWARI: Anybody disagree just
13 because somebody didn't leave a bad situation,
14 abusive relationship, didn't report it, does that
15 mean they can't be believed? Anybody disagree
16 with what some of the jurors say?

17 Now, Ms. Burke, you say you have
18 children.

19 PROSPECTIVE JUROR: No.

20 MS. RAJESWARI: Ms. Apostol?

21 PROSPECTIVE JUROR: I have two children.

22 MS. RAJESWARI: How old are they?

23 PROSPECTIVE JUROR: 17 and 1.

24 MS. RAJESWARI: Teenage children. Do
25 they argue?

1 PROSPECTIVE JUROR: Seldom.

2 MS. RAJESWARI: Seldom. When they were
3 younger did they fight? You have to settle
4 arguments between them?

5 PROSPECTIVE JUROR: Yes.

6 MS. RAJESWARI: How do you settle it?

7 PROSPECTIVE JUROR: I would agree to
8 speak with both of them, listen to each one and
9 then make a decision.

10 MS. RAJESWARI: Did everybody hear what
11 she said? Can I have your assurance if you are
12 picked as a juror you will listen to both sides?

13 THE COURT: Sustained. Don't say that.
14 Strike that. The panel will disregard that.

15 MS. RAJESWARI: All right. If you will
16 keep an open mind and you will listen to what the
17 evidence is, you will listen to what the witnesses
18 say and then make a decision, yes?

19 Is there anybody here who can't give us
20 the assurance you will listen to the witnesses and
21 you will keep an open mind and you can make a
22 decision? Anybody who can't make a decision?

23 Ms. Lowe.

24 PROSPECTIVE JUROR: I am not sure again
25 the nature of the case if I could be that

1 open-minded to listen to both sides. I hope I
2 wouldn't have any preconceived notions because of
3 the nature of the case, that my emotions are
4 getting in the way.

5 MS. RAJESWARI: I am just mentioning it.
6 Thank you for your candor.

7 Ladies and gentlemen, this is the time to
8 tell us if you think that there is some issue that
9 prevents you from being a fair juror, fair to the
10 defense and to the People. So thank you for your
11 candor.

12 Does anybody here agree with Ms. Lowe
13 that they cannot listen to the evidence and keep
14 an open mind and come to a decision?

15 And you also heard Judge Rooney give you
16 various different standards. Some of you didn't
17 agree, some of you said you couldn't and I thank
18 you for coming up and telling us.

19 Is there anybody here who feels that they
20 cannot sit and deliberate with eleven other
21 jurors? Based upon previous jury experience or
22 based upon any other reason? Anybody? What about
23 you?

24 THE COURT: I already asked that
25 question.

1 MS. RAJESWARI: Okay. And can everybody
2 give me an assurance that if you are picked as a
3 juror you will follow Judge Rooney's instructions
4 and I am not going to repeat what the standard is
5 on beyond a reasonable doubt. You will follow
6 what he says? Yes? Is there anybody here who
7 cannot give me that assurance?

8 Mr. McMillan, you can follow the judge's
9 instructions on the standard of proof? Listen to
10 him?

11 PROSPECTIVE JUROR: Yes.

12 MS. RAJESWARI: The judge also mentioned
13 you cannot --

14 THE COURT: I already discussed that with
15 the panel.

16 MS. RAJESWARI: Everybody can give me
17 that assurance? Yes?

18 Ladies and gentlemen, there are for a
19 variety of reasons personal, social, political,
20 religious, whatever they may be that a juror may
21 feel no matter what the prosecutor proves, no
22 matter how strong the evidence is, even if they
23 convince me, I still cannot convict, I have a
24 hesitation based on any reason? Is there anybody
25 here who feels that way?

1 Juror number one. Mr. Libretti, you feel
2 that way? Thank you.

3 Does anybody here agree with
4 Mr. Libretti?

5 What about you, Mr. Russell?

6 PROSPECTIVE JUROR: No.

7 MS. RAJESWARI: If I prove my case to you
8 beyond a reasonable doubt you would be able to
9 convict?

10 PROSPECTIVE JUROR: Sure.

11 MS. RAJESWARI: Can I assume everybody
12 else agrees with Mr. Russell? Yes.

13 (Nodding heads.)

14 MS. RAJESWARI: And is there anything
15 that I haven't mentioned or Justice Rooney hasn't
16 mentioned till now that we don't know about your
17 personal life, your life experiences if you think
18 will affect your ability to sit on this case with
19 these charges?

20 Is there anything that we haven't thought
21 to ask you that you think will affect you?
22 Anybody?

23 Ms. Melendez, do you want to speak to us
24 in private?

25 PROSPECTIVE JUROR: Yes.

1 MS. RAJESWARI: Other than Ms. Melendez,
2 is there anybody else?

3 Okay. If there are no takers for that
4 question, I am going to thank you for waiting all
5 day for your time and your attention. Thank you
6 very much.

7 THE COURT: Mr. Lamb.

8 MR. LAMB: I promise I will be brief.

9 Mr. Listwon, I didn't quite hear what you
10 said.

11 PROSPECTIVE JUROR: Self-employed,
12 selling gift items to small stores.

13 MR. LAMB: Okay. As salesman now
14 retired.

15 PROSPECTIVE JUROR: Yes. Disabled, I had
16 a heart operation.

17 MR. LAMB: Okay. And, Mr. Graziano, I
18 believe you had indicated you had been on a
19 criminal jury sometime ago?

20 PROSPECTIVE JUROR: Yes.

21 MR. LAMB: What was the -- what were the
22 charges involved if you don't mind me asking?

23 PROSPECTIVE JUROR: Murder.

24 MR. LAMB: That was a murder case. Were
25 there any sexual crimes charged?

1 PROSPECTIVE JUROR: Not that I recall,
2 no.

3 MR. LAMB: And there was nothing about
4 that experience that you feel would make you
5 unqualified to be a juror in this case?

6 PROSPECTIVE JUROR: No.

7 MR. LAMB: And I believe, Ms. Lowe, you
8 had indicated you were a civil juror?

9 PROSPECTIVE JUROR: Yes.

10 MR. LAMB: You understand there is a
11 difference in both, in the type of case and the
12 law that's applied?

13 PROSPECTIVE JUROR: Um-hum.

14 MR. LAMB: You wouldn't carry the rules
15 of law that were given to you in that case over to
16 this case, right?

17 PROSPECTIVE JUROR: No.

18 MR. LAMB: You would listen to Judge
19 Rooney as to what the law in this case is?

20 PROSPECTIVE JUROR: Right. That would
21 not be a problem for me.

22 MR. LAMB: As a matter of fact, let me
23 ask that question to all of you. Do all of you --
24 can all of you promise me that you will listen to
25 the law as judge Rooney will give it to you at the

1 end of the case? He will instruct you as to the
2 law as to how you are to apply the evidence and
3 whether you agree with it or not.

4 Can you all promise us that you will
5 follow Judge Rooney's advice as to -- rulings as
6 to what the law is? Can you all assure us that
7 you can do that?

8 (Heads nodding.)

9 MR. LAMB: Now Ms. Rajeswari asked if you
10 would automatically or something to the affect
11 that you would automatically disregard an alleged
12 rape victim's claim if she did not report it
13 immediately.

14 I am going to ask you the reverse
15 question. Would you consider it a factor to be
16 considered in terms of her credibility whether she
17 is telling the truth?

18 MR. KATCHEN: Objection, Judge.

19 MS. RAJESWARI: Objection.

20 THE COURT: Overruled.

21 PROSPECTIVE JUROR: Could you repeat
22 that?

23 MR. LAMB: Okay. If a witness -- if a
24 complaining witness in a sex crime case testifies
25 that they did not report the incident immediately,

1 would you consider that as a factor to be
2 considered in whether she's telling the truth that
3 it happened or not?

4 PROSPECTIVE JUROR: I think so.

5 PROSPECTIVE JUROR: Yes.

6 MR. LAMB: Mr. Genovese, the answer to
7 your question is yes?

8 PROSPECTIVE JUROR: I feel the same way.

9 MR. LAMB: Do you all agree it is a
10 factor to be considered? Yes, Mr. Kielty?

11 PROSPECTIVE JUROR: No.

12 MR. LAMB: You don't think it's a factor
13 to be considered as to whether she is telling the
14 truth or not?

15 PROSPECTIVE JUROR: No.

16 PROSPECTIVE JUROR: I don't either.

17 PROSPECTIVE JUROR: Me neither.

18 MR. LAMB: You don't either?

19 THE COURT: That's Ms. Barros you are
20 talking to?

21 PROSPECTIVE JUROR: Mr. Lagambina.

22 THE COURT: You know the trial jury.

23 PROSPECTIVE JUROR: She could be scared,
24 frightened.

25 MR. LAMB: I didn't ask --

1 THE COURT: Can you consider that too? I
2 think what Mr. Lamb wants to know in evaluating
3 the credibility of the complaining witness, of any
4 witness would you consider all the facts and
5 circumstances that come out through direct and
6 cross-examination?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Pardon?

9 PROSPECTIVE JUROR: I would not. What he
10 was asking me, I don't -- I wouldn't. I wouldn't
11 mind if she didn't want to say. If she didn't say
12 right away I would think that maybe she is scared
13 too, that could be a reason.

14 MR. LAMB: Or maybe she lied, either way.

15 PROSPECTIVE JUROR: It's two ways. Not
16 whether you would disregard her testimony, but
17 whether you would consider it as a factor for you
18 to consider one of the pieces.

19 PROSPECTIVE JUROR: It could go both
20 ways.

21 MR. LAMB: To wrestle with.

22 PROSPECTIVE JUROR: I agree.

23 PROSPECTIVE JUROR: For me the factor
24 whether she was lying would lie more on what I am
25 hearing is the evidence, but not at all on the

1 fact that she didn't come forward.

2 MR. LAMB: Okay, thank you. Anybody
3 else?

4 Anybody else that feels they wouldn't
5 even consider it as a possibility, as a possible
6 factor in considering whether she's telling the
7 truth or not?

8 How about Mr. Maher?

9 PROSPECTIVE JUROR: I think it would go
10 either way. She was either scared or she could be
11 lying.

12 MR. LAMB: You would consider it?

13 PROSPECTIVE JUROR: Yes.

14 MR. LAMB: And weigh it based upon all
15 the other evidence?

16 PROSPECTIVE JUROR: Yes.

17 MR. LAMB: Does everybody agree with
18 that? That's all I'm asking. Maybe I didn't ask
19 it well. At this late hour, it's a possibility.

20 Does anybody here -- as you know now this
21 is not an incident amongst, between strangers.
22 This is an incident between parties that knew one
23 another, not only knew one another, but lived
24 together. There was a relationship.

25 Is there anybody here who has had such a

1 traumatic or negative relationship, been in such a
2 terrible relationship that they feel that it would
3 carry over into this case, that they would not be
4 objective in this case?

5 And if your answer -- if you'd like to
6 answer the question privately you can certainly do
7 that. Nobody here that's been -- at any time in
8 the past been in such a traumatic relationship in
9 the past that they would not carry -- that it
10 might effect their thinking in this case?

11 Yes, Ms. Barros.

12 PROSPECTIVE JUROR: Not this exact
13 circumstance, but I have had personal experiences
14 in a relationship where the other person's version
15 was believed over mine and that's a hard pill to
16 swallow.

17 MR. LAMB: And that may affect your
18 ability to be objective and open minded in this
19 case?

20 PROSPECTIVE JUROR: That's something I
21 carry with me and that was over ten years ago.
22 And I just -- that part is very vivid for me that
23 I was not believed and the other person was
24 because they were just very good at their version
25 of it.

1 MR. LAMB: Um-hum. Thank you.

2 My last question is if you are selected
3 as a juror can you assure me, all of you assure me
4 that you would give my client the same fair trial
5 that you would want if you were sitting where he
6 is sitting now? Can I get that assurance from all
7 of you?

8 PROSPECTIVE JUROR: Yes.

9 MR. LAMB: Miss, could you make that
10 assurance to me?

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Can you step up just one
13 moment please?

14 (Discussion held off the record at the
15 bench.)

16 THE COURT: All right. I believe,
17 Ms. Po, you are a physician assistant?

18 PROSPECTIVE JUROR: No medical assistant.

19 THE COURT: Medical assistant in a
20 medical office?

21 PROSPECTIVE JUROR: Yes, in a
22 dermatologist's office.

23 THE COURT: Okay. And, Ms. Apostol, you
24 are a nurse?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Are there any other nurses or
2 people with medical training?

3 PROSPECTIVE JUROR: Yes, I am.

4 THE COURT: Mr. Maher, I'm sorry. You are
5 a firefighter and a nurse.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Anybody else? Ms. Tuchowska?

8 PROSPECTIVE JUROR: I am a registered
9 nurse Staten Island Hospital.

10 THE COURT: This is what happens late
11 Friday afternoon. I miss things. That went right
12 by me. Anybody else, with any medical training?

13 What I am going to do with regard to the
14 four of you, Ms. Po, Mr. Maher, Ms. Tuchowska,
15 Ms. Apostol is to give you an instruction and ask
16 you if you can abide by it should you be selected.

17 There is going to be I am told is medical
18 evidence in this case. In evaluating evidence and
19 the issues presented you should use your common
20 sense, knowledge and experience just as you would
21 in making decisions in your daily life. And when
22 I speak of knowledge and experience in this
23 context I mean the sort of knowledge and
24 experience that an average person would acquire in
25 life.

1 Some of you may have something more than
2 ordinary knowledge or experience in a certain
3 area, specifically in the medical field. And you
4 may have developed a special expertise in this
5 area, well beyond what an average person would
6 have. If you have such a special expertise and if
7 it relates to some material issue in this case,
8 and I don't know if your medical background will
9 relate to a material issue in this case or not
10 because I haven't heard the evidence either, but
11 if it does, it would be wrong to rely on your
12 special expertise to inject into your
13 deliberations either a fact that is not in
14 evidence or unfavorable from the evidence or an
15 opinion that could not be drawn from the evidence
16 to a person without that special expertise. The
17 reason it would be wrong to do so is the jury must
18 decide the case only on the evidence presented in
19 the courtroom.

20 And so with respect to any material issue
21 in the case you must not use any special expertise
22 you have to insert into deliberations, evidence
23 that has not been presented in the Courtroom
24 during the trial.

25 Ms. Po, Mr. Maher, Ms. Tuchowska and

1 Ms. Apostol could you all accept and follow that
2 instruction if you were sworn as jurors in this
3 case and you got that instruction at the end of
4 the trial? Would any of you have any problem
5 following and accepting that rule? Nobody. Okay
6 thank you very much.

7 I think Ms. Melendez wanted to talk to
8 us. We will speak with Ms. Melendez at a sidebar
9 and then we'll take a few minutes.

10 (The following took place at the
11 sidebar:)

12 (Prospective juror approached.)

13 THE COURT: This came up when you were
14 voir diring and I didn't hear everything so what
15 are we going to talk about?

16 MS. RAJESWARI: I think I was asking her
17 can rape occur between boyfriend and girlfriend
18 and domestic relationship and I didn't actually
19 hear her answer myself.

20 THE COURT: You said -- somebody said you
21 wanted to talk.

22 PROSPECTIVE JUROR: When I was -- I was
23 raped. I don't like to talk about this.

24 THE COURT: You think you can be a fair
25 juror in this case or not?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: You think you could. That's
3 a nod for the record. Would your personal
4 experience in this regard prevent you from being
5 fair and objective or not?

6 PROSPECTIVE JUROR: What do you mean?

7 THE COURT: Do you think you could be
8 fair and objective in evaluating the evidence
9 here?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. Counsellors any
12 questions?

13 MR. LAMB: Well, I don't mean to pry but
14 I am sure that was a horrible experience and there
15 is going to be a woman testifying here who is
16 going to also claim that she was raped. And the
17 whole question here is -- the question is whether
18 she's telling the truth or not.

19 Would your experience horrible experience
20 that you had make you so sympathetic towards her
21 that you might not listen to the evidence and feel
22 for her?

23 PROSPECTIVE JUROR: Yes.

24 MR. KATCHEN: We're prepared to consent
25 for cause.

1 THE COURT: We'll deal with that in a
2 bit.

3 Thank you. You could have a seat and
4 we'll be back with you shortly.

5 (The following took place in open court:)

6 THE COURT: We're going to take a few
7 minutes while the lawyers go over their notes and
8 you will learn your faith. You are free to step
9 out or stay here. Just don't discuss the case.
10 Thank you.

11 (The following took place at the
12 sidebar:)

13 THE COURT: We're at a sidebar with the
14 lawyers and the defendant. I guess we'll go one
15 at a time.

16 Carmine, how many challenges does each
17 side have left for the first twelve?

18 MR. KATCHEN: The People used ten and
19 defense used eleven.

20 THE COURT: Okay. So we'll go one at a
21 time. Mr. Libretti. Cause People?

22 MR. KATCHEN: Yes.

23 MR. LAMB: Consent.

24 THE COURT: For cause on consent.

25 Next is Mr. Listwon. Cause People?

1 MR. KATCHEN: No.

2 THE COURT: Defense?

3 MR. LAMB: No.

4 THE COURT: Peremptory People?

5 MR. KATCHEN: Yes.

6 THE COURT: Next is Mr. Genovese. Cause

7 People?

8 MR. KATCHEN: Yes.

9 MR. LAMB: Yes, I consent to that.

10 THE COURT: For cause on consent.

11 Next is Mr. Lagambina. Cause People?

12 MR. KATCHEN: No.

13 THE COURT: Defense?

14 MR. LAMB: No.

15 THE COURT: Peremptory People?

16 MR. KATCHEN: No.

17 THE COURT: Defense?

18 MR. LAMB: Yes.

19 THE COURT: Ms. Lowe. Cause People?

20 MR. KATCHEN: Yes, Judge.

21 MR. LAMB: Consent.

22 THE COURT: Cause on consent.

23 Ms. Babolato. Cause, people?

24 MR. KATCHEN: Yes.

25 MR. LAMB: Yes.

1 THE COURT: For cause on consent.
2 Mr. Maher. Cause People?
3 MR. KATCHEN: No.
4 THE COURT: Defense?
5 MR. LAMB: No.
6 THE COURT: Peremptory People?
7 MR. KATCHEN: No.
8 THE COURT: Defense?
9 MR. LAMB: Yes.
10 THE COURT: Ms. Tuchowska. Cause People?
11 MR. KATCHEN: No.
12 THE COURT: Defense?
13 MR. LAMB: No.
14 THE COURT: Peremptory People?
15 MR. KATCHEN: No.
16 THE COURT: Defense?
17 MR. LAMB: Yes.
18 THE COURT: You got one more.
19 Right, Carmine?
20 THE CLERK: Yes.
21 THE COURT: Mr. Marino. Cause People?
22 MR. KATCHEN: Yes.
23 MR. LAMB: Consent.
24 THE COURT: For cause on consent.
25 Next is Mr. Balaj. Cause People?

1 MR. KATCHEN: Yes.

2 THE COURT: Balaj?

3 MR. KATCHEN: Yes. He was a defense
4 witness in a case I prosecuted. I cross-examined
5 him and he said --

6 MR. LAMB: You weren't satisfied with his
7 answer?

8 MS. RAJESWARI: He didn't have a good
9 experience from it, Judge.

10 MR. KATCHEN: I mean --

11 MR. LAMB: I think he said that he walked
12 away pretty neutral. That was my opinion.

13 THE COURT: He did. I mean again I am no
14 mind reader. I can only go with what this man
15 said that experience would have no affect on his
16 ability to evaluate this case fairly and
17 impartially.

18 MS. RAJESWARI: As he proceeded as he
19 left his last thing it left a bad -- you can have
20 it read back.

21 THE COURT: I don't think he said anything
22 objectively that could be qualified what would be
23 a cause challenge.

24 MR. KATCHEN: Could I be heard?

25 THE COURT: Briefly.

1 MR. KATCHEN: A person was dismissed for
2 cause based upon a conversation we couldn't know
3 anything about outside. This juror was a person I
4 cross-examined in a different trial. I think --

5 THE COURT: Apparently a minor witness
6 from what I understood.

7 MR. KATCHEN: Of --

8 THE COURT: Are you opposing?

9 MR. LAMB: I am opposing.

10 THE COURT: Challenge is denied.

11 You don't have a cause challenge?

12 MR. LAMB: For Balaj.

13 THE COURT: People peremptory?

14 MR. KATCHEN: Yes.

15 THE COURT: Next is Graziano. Cause
16 People?

17 MR. KATCHEN: No.

18 THE COURT: Defense?

19 MR. LAMB: This is Graziano.

20 THE COURT: Right.

21 MR. LAMB: No cause.

22 THE COURT: Peremptory People?

23 MR. KATCHEN: Yes.

24 THE COURT: That's your fourteenth. You
25 each have one left.

1 THE CLERK: Graziano was a -- was a
2 peremptory People?

3 THE COURT: Perempt People.

4 Next is Kielty. Cause People?

5 MR. KATCHEN: Yes.

6 MR. LAMB: Consent.

7 THE COURT: For cause on consent.

8 Next is Barros. Cause People?

9 MR. KATCHEN: Yes.

10 MR. LAMB: Consent.

11 THE COURT: Cause on consent.

12 Next is Ms. Buonincontro. Cause People?

13 MR. KATCHEN: No.

14 THE COURT: Defense?

15 MR. LAMB: No.

16 THE COURT: Peremptory People?

17 MR. KATCHEN: No.

18 THE COURT: Defense?

19 MR. LAMB: No.

20 THE COURT: No. So, Carmine,

21 Ms. Buonincontro becomes Juror 12.

22 THE CLERK: Yes.

23 THE COURT: She's Number 12.

24 THE CLERK: That's Jennifer Buonincontro.

25 THE COURT: Let's see if we can get some

1 alternates. So we're now into the alternate
2 situation. Each side has two peremptories per
3 seat.

4 Ms. Burke, cause People?

5 MR. KATCHEN: No.

6 THE COURT: Defense?

7 MR. LAMB: No.

8 THE COURT: Peremptory People?

9 MR. KATCHEN: No.

10 THE COURT: Defense?

11 MR. LAMB: No. No challenge.

12 THE COURT: No perempt?

13 MR. LAMB: No.

14 THE COURT: Ms. Burke becomes

15 Alternate 1.

16 THE CLERK: Yes, Judge.

17 THE COURT: Next is Ms. Po. Cause

18 People?

19 MR. KATCHEN: No.

20 THE COURT: Defense?

21 MR. LAMB: No.

22 THE COURT: Peremptory People?

23 MR. KATCHEN: No.

24 THE COURT: Defense?

25 MR. LAMB: Yes.

1 THE COURT: That's a peremptory?

2 MR. LAMB: Yes.

3 THE COURT: Next is Mr. Driscoll. Cause
4 People?

5 MR. KATCHEN: No.

6 THE COURT: Defense?

7 MR. LAMB: No. Yes. I am sorry I am
8 looking at the wrong sheet.

9 MS. RAJESWARI: I didn't hear you,
10 Mr. Lamb.

11 MR. LAMB: My client wants to challenge
12 him for cause.

13 THE COURT: Why?

14 MR. LAMB: I believe he continued to
15 vacillate as to his ability to state
16 unequivocally, great hesitation.

17 THE COURT: People?

18 MR. KATCHEN: We are opposing that,
19 Judge. When he was asked to give an unequivocal
20 answer to the Court and even given the option of
21 continuing to say I am not sure, he gave an
22 unequivocal, yes, I could be fair.

23 THE COURT: I am going to grant the
24 challenge.

25 Next is Ms. Apostol. Cause People?

1 MR. KATCHEN: No.

2 THE COURT: Defense?

3 MR. LAMB: No.

4 THE COURT: Peremptory People?

5 MR. KATCHEN: No.

6 THE COURT: Defense?

7 MR. LAMB: Yes.

8 THE COURT: That's your second for the
9 second seat. Am I right, Carmine?

10 THE CLERK: Yes.

11 THE COURT: Next is Mr. Meaney. Cause
12 People?

13 MS. RAJESWARI: Your Honor, Mr. Lamb in
14 this round Ms. Tuchowska, medical assistant,
15 Ms. Po and Ms. Apostol, he is knocking out every
16 single person who has a medical expertise based on
17 their profession. And in the previous rounds --
18 in the previous round when there was a physician
19 yesterday, he had knocked her out for that also.

20 I am making a Batson challenge at this
21 time.

22 THE COURT: You want to be heard?

23 MR. LAMB: I am not making a decision.

24 THE DEFENDANT: I want to tell you
25 something.

1 (Discussion held off the record.)

2 MR. LAMB: First of all, I don't see
3 where they constitute a class. Secondly, my
4 challenge is not because of that. I am not just
5 satisfied with the answers that she gave to the
6 DA.

7 THE COURT: Who are we talking about now?

8 MR. LAMB: Ms. Apostol.

9 THE COURT: I don't think that's a prima
10 facie showing. Batson challenge is denied.

11 Mr. Meaney is next up. Cause, People?

12 MR. KATCHEN: Yes, Judge. I believe he
13 said he had prior conviction and having the
14 assault.

15 THE COURT: Misdemeanor assault.

16 MR. KATCHEN: Attempted misdemeanor
17 assault.

18 THE COURT: We are talking about B
19 misdemeanor.

20 MR. KATCHEN: On an ex-girlfriend.

21 THE COURT: You want to be heard?

22 MR. LAMB: He didn't say that it would
23 have any affect on his ability to be fair.

24 THE COURT: I am not a mind reader. If
25 it was a felony it would be a felony conviction,

1 he would be disqualified. But B misdemeanor
2 conviction given his answers doesn't disqualify
3 him. I will deny the cause challenge.

4 Do you have a cause challenge?

5 MR. LAMB: No.

6 THE COURT: Peremptory People?

7 MR. KATCHEN: Yes.

8 THE COURT: Next is Mr. Pope. Cause
9 People?

10 MR. KATCHEN: No.

11 THE COURT: Defense?

12 MR. LAMB: No.

13 THE COURT: Peremptory People?

14 MS. RAJESWARI: Your Honor we are up to
15 Alternate Number 2 and we previously exercised one
16 challenge?

17 THE COURT: You have exercised one. You
18 have one left for the second seat.

19 MR. KATCHEN: We'll exercise a
20 peremptory.

21 THE COURT: That's the People's second
22 peremptory for Seat Number 2.

23 THE CLERK: Yes.

24 THE COURT: Both sides have exercised two
25 peremptories for Seat Number 2.

1 Next is Mr. Romanello. Cause People?

2 MR. KATCHEN: No.

3 THE COURT: Defense?

4 MR. LAMB: No.

5 THE COURT: And neither side has
6 peremptories left. So Mr. Romanello -- right,
7 Carmine?

8 THE CLERK: Yes.

9 THE COURT: Mr. Romanello becomes
10 Alternate Number 2?

11 THE CLERK: Yes.

12 THE COURT: Next is Mr. Russell. Cause
13 People?

14 MR. KATCHEN: No.

15 THE COURT: Defense?

16 MR. LAMB: No.

17 THE COURT: Peremptory People?

18 MR. KATCHEN: No.

19 THE COURT: Defense?

20 MR. LAMB: Yes.

21 THE COURT: Next is Ms. Melendez. Cause
22 People?

23 MR. KATCHEN: Yes.

24 MR. LAMB: Consent.

25 THE COURT: For cause on consent.

1 And, finally, we have Mr. McMillan. Cause
2 People?

3 MR. KATCHEN: No.

4 THE COURT: Defense?

5 MR. LAMB: No.

6 THE COURT: Peremptory People?

7 MR. KATCHEN: No.

8 THE COURT: Defense?

9 MR. LAMB: No.

10 THE COURT: No. Okay he becomes
11 Alternate 3, Carmine?

12 THE CLERK: Yes.

13 THE COURT: We'll swear them in and tell
14 them to come back Monday. I am going to make it
15 10:30. I have the new Grand Jury to deal with
16 Monday but we should be ready to go by 10:30.

17 (The following took place in open court:)

18 THE CLERK: The following jurors have
19 been selected for this case. Jennifer
20 Buonincontro, you are Juror Number 12. Megan
21 Burke, you are Alternate Juror Number 1. Michael
22 Romanello, you are Alternate Juror Number 2. And
23 William McMillan, you are Alternate Juror 3.

24 If I called your name remain seated. If
25 I did not you are excused from this case with the

1 thanks of the court. Return now to central jury
2 across the street for your next trial. Thank you.

3 THE COURT: Thank you.

4 (Prospective jurors not selected left the
5 courtroom.)

6 THE COURT: If I called your name remain
7 seated.

8 THE CLERK: Will those four jurors whose
9 name I called please stand? Raise your right hand
10 to be sworn as trial jurors.

11 Do you and each of you solemnly swear
12 that you will try this action in a just and
13 impartial manner and to the best of your judgment
14 render a verdict according to the law and the
15 evidence, so help you God.

16 ALL JURORS: Yes.

17 THE COURT: Thanks. You can have a seat
18 for just a minute and I am going to let you go.
19 Thank you for agreeing to serve.

20 Ms. Burke, Mr. Romanello and Mr. McMillan
21 you heard yourselves designated as alternate
22 jurors. We wouldn't dare try a case without
23 alternates. People get sick, emergencies come up
24 and that happens all the time. If and when it
25 does you would be moved into another seat. So I

1 that this to you so you won't feel you're the
2 fifth wheels, along for the ride. You are an
3 integral part of the case. We are grateful to you
4 for agreeing to serve.

5 We are going to adjourn now until Monday
6 morning and I am going ask you to be in the jury
7 room Monday morning at 10:30 in the morning. The
8 officer will show you where the jury room is on
9 your way out. It's right across the hall.

10 And let me just instruct you as I must
11 before you leave the building. You must not
12 discuss this case among yourselves or with anyone
13 else. Until you begin deliberations at the end of
14 the trial you simply must not talk about the case.

15 Prior to being discharged you may not
16 speak with anyone about taking anything, any
17 payment or benefit in return for supplying
18 information concerning this trial.

19 You must report directly to me any
20 incident within your knowledge involving an
21 attempt by anyone to improperly influence you or
22 any member of the jury.

23 Don't visit or view the premises or place
24 where any charged crime was alledgedly committed
25 or any other premises or place involved in the

1 case. I don't believe you've heard any particular
2 location yet. I expect you will.

3 Don't read, view or listen to any media
4 account of this case should there be any. That
5 includes the Internet. Don't try to research any
6 fact, issue or law related to this case on your
7 own, whether by research in the library or the
8 Internet or by any other means.

9 And, finally, don't form any opinion,
10 please keep an open mind until you begin
11 deliberations at the end of the case. Thank you
12 all very much. It was a long day. We appreciate
13 your patience. Have a good weekend and we'll see
14 you on Monday at 10:30. The officer will show you
15 the jury room.

16 (Four sworn jurors left the courtroom.)

17 THE COURT: Sworn jurors have left.
18 Monday 10:30.

19 THE CLERK: Court's in recess.

20 MS. RAJESWARI: Your Honor, can I
21 approach for a second?

22 (Discussion held off the record at the
23 bench.)

24 THE COURT: Mr. Rucano, I want to
25 instruct you be very careful about discussing the

1 case out on the sidewalk or in the hallways of the
2 courthouse when the jurors might be around. That
3 would be obviously improper.

4 The lawyers have the same instruction, be
5 very careful what you say to anyone outside of the
6 courtroom. It's very important that you don't say
7 anything about the case to anyone in front of
8 these jurors.

9 THE DEFENDANT: Yes. I do not discuss it
10 with anyone.

11 THE COURT: Okay. Monday morning.

12 THE CLERK: Step out.

13 (Court stands in recess until Monday,
14 September 13th, 2010 at 10:30 a.m.)

15 * * * *

16 It is hereby certified that the
17 foregoing is a true and accurate
18 transcript of the proceedings.

19 
20 ELAINE FORLENZA, RPR
21 OFFICIAL COURT REPORTER
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